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**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
BANGALORE**



**SPECIALISED TRAINING PROGRAMME FOR DIRECT
RECRUIT AAOs(LEGAL) OF LIFE INSURANCE
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**AIR 1979 SUPREME COURT 1652**

(From: 1976 Lab IC 1358 (Cal))

V. R. KRISHNA IYER, D. A. DESAI AND A. D. KOSHAL, JJ.

Civil Appeal No. 1168 of 1978, D/- 4 -5 -1979.

Shankar Chakravarti, Appellant v. Britannia Biscuit Co. Ltd. and another, Respondents.

Industrial Disputes Act (14 of 1947), S.33(2)(b) and S.10 - Application seeking approval of the order of dismissal for misconduct - Enquiry found to be conducted in violation of principles of natural justice - Employer not asking for opportunity to lead evidence to prove charges - No duty cast on Tribunal suo motu to call upon employer to adduce evidence - High Court commits error in granting such non-sought opportunity at the stage of L. P. Appeal.

1976 Lab IC 1358 (Cal), **Reversed.****(Paras 30, 31, 33)****Cases Referred :****Chronological Paras**

1975 Lab IC 1441 : (1976) 1 SCR 361 : AIR 1975 SC 1900	6, 13, 24, 27, 28, 34
1973 Lab IC 851 : (1973) 3 SCR 587 : AIR 1973 SC 1227	25, 27, 28, 35
1972 Lab IC 13 : (1972) 1 SCR 755 : AIR 1972 SC 136	20, 23, 28
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Mr. P. Das Gupta, Advocate and Mrs. L. Arvind, Advocate for Appellant; M/s V. M. Tarkunde and Anand Prakash, Sr. Advocates (M/s. P. H. Parekh, C. B. Singh, Mukul Mudgal and Mrs. Anand Prakash, Advocates with them) for Respondents.

Judgement

DESAI, J:- The hollow plea of the employer of an alleged denial of an opportunity (never claim at any stage except in Letters Patent Appeal) to substantiate an alleged misconduct of the workman by evidence alinude has been responsible for dragging a tiny dispute rendering the workman jobless for an unusually long period of more than 7 years to this apex court.

2. Facts now beyond the pale of controversy are few and may be briefly stated. Appellant joined service with the first respondent company (company for short) in August 1963 and was confirmed in March 1964. In October 1970 appellant was drawing a composite salary of Rs. 180/-. An industrial dispute touching the workmen of the company was pending before the Industrial Tribunal, when the events leading to the present appeal occurred. On 1st October, 1970 around 5 p.m. appellant is alleged to have hoisted two red flags atop the Branch Office building simultaneously shouting inflammatory slogans. He is alleged to have threatened the Shift Manager Shree Manik Mukharjee who was on duty at the relevant time. The incident was reported to police. Respondent employer felt aggrieved by such indiscipline exhibited by the appellant and decided to hold a disciplinary enquiry, as a first step towards which, a charge-sheet dated 1st October 1970 was served upon the appellant calling upon him to submit his explanation within three days from the receipt of the charge-sheet. In the meantime on 3rd October 1970 first respondent company declared a lock out. Appellant submitted his explanation on 10th October denying all the charges and complaining that as he is a trade union leader he is being singled out for victimisation. On the same day appellant was arrested by police and some criminal case was lodged against him in which he was discharged by the Magistrate on 2nd December 1970. Somehow or the other the management did not proceed with the enquiry till as late as 30th June 1971 when the appellant was informed that the enquiry would be held on July 8, 1971. In the meantime appellant was detained under the Prevention of Violence Act, 1970, with the result that when he received the intimation of the date on which the enquiry was to be held, he informed the company that as he is in detention he would not be able to attend the enquiry and sought an adjournment. Adjournment appears to have been granted but a fresh notice was served upon the appellant in the Jail intimating to him to appear before enquiry officer on 15th September 1971 but as the appellant was still in detention, he could not avail of this opportunity. Consequently on 16th September 1971 the enquiry proceeded ex parte. Enquiry Officer held the charges proved and on the report of the enquiry officer the management of the first respondent company terminated service of the appellant and gave one month's wages in lieu of notice. Since an industrial dispute between the workmen of the company and the company was then pending before the Industrial Tribunal, an application was made under Section 33 (2) (b) of the Industrial Disputes Act, 1947 ('Act' for short) seeking approval of the Industrial Tribunal to the action of the management terminating service of the appellant. This case came to be registered as Case Number 128/71 under Section 33 (2) (b) of the Act before the III Industrial Tribunal, West Bengal.

3. On a notice issued by the Industrial Tribunal appellant was produced before the Tribunal from the Jail Custody and he submitted his written statement. The Tribunal then proceeded to adjudicate upon the dispute. The Tribunal was of the opinion that the enquiry was conducted in violation of the principles of natural justice and hence vitiated. Accordingly, by its Award dated 15th September 1973, the Tribunal rejected the application for approval of the action terminating service

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of the appellant made by the company and declined to grant approval.

4 The company preferred Writ Petition under Articles 226 and 227 of the Constitution to the High Court of Calcutta. The learned single Judge of the High Court before whom the writ petition came up for hearing dismissed the petition observing that the enquiry was not held according to the principles of natural justice and the order terminating the service made in such an enquiry is invalid and of no effect and the Industrial Tribunal was fully justified in declining to grant approval of such an action. It may specifically be mentioned that no contention was raised before the learned single Judge that no opportunity was afforded to the first respondent company to lead evidence in proof of charges after the domestic enquiry was found to be defective.

5. The company preferred Letters Patent Appeal No. 80/74. A Division Bench of Calcutta High Court held that after the Industrial Tribunal adjudicated upon the preliminary issue whether the enquiry was in accordance with the principles of natural justice and having held against the company it was incumbent upon the Industrial Tribunal to give an opportunity to the employer to lead evidence to prove the charges alleged against the workman and as the issue about the validity of the enquiry was not decided as preliminary issue and as thereafter, no opportunity was given to the employer it would be necessary to remand the matter to the Industrial Tribunal



for giving an opportunity to the employer to adduce further evidence, if so advised, and then to dispose of the application made by the employer under Section 33 (2) (b).

6. The present appeal by special leave is filed by the aggrieved workman. While granting this Court limited it to the question as to whether the principle in *Cooper Engineering Ltd. v. P. P. Mundhe*, (1976) 1 SCR 361:(1975 Lab IC 1441), applies to a situation where the management seeks approval of an order of dismissal under Section 33 (2) (b) of the Act. That necessitates ascertainment of the principle enunciated by this Court in *Cooper Engineering Ltd.* case.

7. Before the contention raised in this appeal is adverted to, the limited nature of the controversy must be put in focus to avoid from the central issue.

8. The challenge to penal termination of service of a workman by the employer whose undertaking is governed by the Act is likely to come before a Labour Court or Industrial Tribunal or National Tribunal for adjudication either by way of a reference under Sec. 10 or by way of an application by the employer under Section 33. Preceding domestic enquiry is implicit in both the situations. Where a workman is accused of misconduct a domestic enquiry has to be held against him in accordance with the provisions contained in the Standing Orders governing the industrial establishment or in the absence of such Standing Orders in accordance with the principles of natural justice. After such a domestic enquiry is held it would be open to the employer to impose a penalty including one of termination of service howsoever styled. If at the time of imposition of penalty no other industrial dispute between the employer and its workmen as comprehended by Section 33 is pending before any of the authorities mentioned in that section it would be open to the workman to approach the appropriate Government to refer the industrial dispute arising out of termination of his service to an appropriate authority under the Act. But if at the relevant time a situation obtains such as is comprehended by Section 33 namely, pendency of a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute touching the workmen of the employer, the employer before his order terminating service of the workman becomes effective has to seek either prior permission or subsequent approval of the action, as the case may be, under Section 33.

9. When the dispute comes before the Industrial Tribunal by way of a reference under Section 10 it is the aggrieved workman who has sought adjudication of the industrial dispute arising from the termination of his service. When the matter comes before the appropriate authority under Section 33 it is the employer who has

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moved for permission or approval of its intended action.

10. Where the reference is at the instance of a workman under Section 10 the Tribunal would call upon the workman to file his statement of claim and thereafter the employer would be called upon to file its written statement. Rule 10-B of the Industrial Disputes (Central) Rules, 1957 provides that within two weeks of the date of receipt of the order of reference, the party representing workmen and the employer involved in the dispute shall file with the concerned authority a statement of demands relating only to the issues as are included in the order of reference and shall also forward a copy of such statement of each one of the opposite parties involved in the said dispute. Similarly, when the employer seeks permission for taking the intended action or seeks approval of the action taken by it under Section 33 it has to make an application as provided by Rule 60 in either Form J or K as the case may be. Both the forms require that the necessity for and circumstances in which the proposed action is taken or is intended to be taken must be clearly and specifically set out and either express permission should be sought before taking the intended action or an approval of the already taken action must be sought.

11. The matter in this case came before the Tribunal upon an application made by the company under Section 33 (2) (b) seeking approval of its action terminating service of the appellant. A copy of the application is not put on record of this appeal. However, it was stated at the Bar that in the application charges preferred against the appellant were set out. The fact that an enquiry and upon the findings recorded in the enquiry, order terminating the service of the workman was passed has also been set out in the application. The Tribunal was called upon to accord its approval to the action. The appellant appeared before the Tribunal and contested this application

totally denying the charges.

12. It must be specifically noticed that the first respondent company in its application seeking approval of its action has set out in its application the charges preferred by it and the domestic enquiry held in respect of the charges. A prayer was made in the application that its action terminating service of the appellant be approved. Nowhere in this application either in express terms or by implication it was averred that in the event the Tribunal comes to the conclusion that the enquiry was defective, the employer first respondent company proposes to offer evidence for substantiating the charges. Neither such an averment was made in the application made to the Industrial Tribunal but till the Industrial Tribunal concluded its proceedings by saying that the matter is set down for making the Award any oral or written application was made on behalf of the company that over and above the record of enquiry it proposed to lead evidence in its possession in respect of the charges to substantiate the same to the satisfaction of the Tribunal. Not only no such request was made at any time before the Award was made by the Industrial Tribunal but no such contention appears to have been taken before the learned single Judge of the Calcutta High Court in Writ Petition filed by the company questioning the validity and correctness of the Award made by the Industrial Tribunal declining to grant approval. Such an opportunity was sought for the first time before the appellate Bench of the Calcutta High Court at the hearing of the Letters Patent Appeal preferred by the company.

13. Mr. Tarkunde, learned counsel for the company formulated his contention thus: When an industrial dispute touching the punitive termination of service of a workman is brought before the Labour Court or the Industrial Tribunal, either under Section 10 or Section 33 of the Act, irrespective of the fact whether the employer has made any express or implied request in its application or in the course of proceeding either orally or in writing, the Labour Court or the Industrial Tribunal must as an obligation in law at the initial stage of the proceeding frame a preliminary issue as to whether the domestic enquiry was in fact held and if held, was in accordance with the Standing Orders or the principles of natural justice or was in any manner defective. If this issue, urged Mr. Tarkunde, is answered in favour of the workman and against the employer, a preliminary finding to that effect should

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be recorded and then notwithstanding the fact that the employer has not made any request in its original application or in the course of proceedings before the Tribunal it is the duty and obligation of the Tribunal to call upon the employer by giving it a specific opportunity to lead evidence if it so chooses to do, to substantiate the charges preferred against the workman. Failure to give such an opportunity either on request of the employer or suo motu by the Tribunal, the proceedings would be vitiated. According to Mr. Tarkunde this proposition is no more res integra and is concluded by the decision of this Court in *Cooper Engineering Ltd. (1975 Lab IC 1441) (SC)* case.

14. As this contention was sought to be substantiated on some of the cases decided by this Court it would be advantageous to examine the proposition first on precedent and then, if it is open, on principle.

15. In *Bharat Sugar Mills Ltd. v. Shri Jai Singh*, (1962) 3 SCR 684 the matter came before this Court questioning an Award of the Industrial Tribunal by which the Tribunal declined to grant permission under Section 33 except in respect of one workman holding that the domestic enquiry was not proper and that the employer was guilty of mala fide conduct and victimisation. Before this Court the workman contended that once the domestic enquiry was found to be improper, the Tribunal had to dismiss the application and it could not take independent evidence and arrive at a finding of its own as to the guilt of the workman. It may be mentioned that there was no preliminary issue framed in this case by the Tribunal about the validity of the enquiry. Yet the employer had adduce evidence to substantiate the charges against the workman simultaneously relying upon the papers of domestic enquiry. Negating this contention of the workman this Court observed as under:

"Where there has been a proper enquiry by the management itself the Tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has



been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct. When such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prima facie proof of the alleged misconduct unless the finding is perverse and has to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to the workman himself that in such a case the Industrial Tribunal should refuse to take evidence and thereby drive the management to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct."

16. This question again surfaced in *Management of Ritz Theatre (P) Ltd. v. Its Workmen* (1963) 3 SCR 461: (AIR 1963 SC 295). The matter came before this Court challenging an Award of the Industrial Tribunal by which the Industrial Tribunal in a reference under Section 10 directed reinstatement of two workmen who were dismissed after holding a domestic enquiry against them. When the matter was before the Tribunal the employer relied not only on the papers of domestic enquiry but 11 witnesses were examined on behalf of the employer and an equal number of witnesses was examined on behalf of the workmen. In the appeal by the employer a contention was raised on behalf of the workmen that once the employer adduced evidence before the Industrial Tribunal to substantiate the charges against the workmen, that by itself would amount to a concession on behalf of the employer that the enquiry held by it was not proper or was defective

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and, therefore, the employer cannot then rely upon the fact that the enquiry being proper the Tribunal cannot go into the merits of the case. Negative this contention after referring to *Bharat Sugar Mills case* (1962) 3 SCR 684, this Court expressed an opinion that there is no authority for the proposition that whenever the employer seeks to lead additional evidence before the Tribunal in respect of dismissal of its employee it must necessarily follow that he has given up his stand based on the previous departmental enquiry and the Tribunal is entitled to examine the dispute on merits itself and on the principles of fair play and justice the proposition is unsound. In reaching this conclusion this Court made some pertinent observations which may be extracted:

"If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer, would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence, instead of following such an elaborate and somewhat cumbersome procedure; if the employer seeks to lead evidence in addition to the evidence adduced at the departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the Tribunal first to consider the preliminary issue and then to proceed to deal with the merits in case the preliminary issue is decided against the employer. That in our opinion, is the true and correct legal position in this matter."

17. It may be noted that in this case evidence was adduced by the employer before any preliminary finding was recorded on the validity of the enquiry. In face, application for adducing additional evidence was made by the employer much before the Tribunal proceeded to examine the validity of the enquiry and evidence was recorded before recording a preliminary finding that the enquiry was improper or defective. The observations in this case have to be understood in the context of the facts found.

18. In *Workmen of Motipur Sugar Factory (Pvt.) Ltd. v. Motipur Sugar Factory*, (1965) 3 SCR 588 : (AIR 1965



SC 1803), the workmen contended before this Court that as respondent employer held no enquiry as required by the Standing Orders before dispensing with the services of the appellants by way of discharge on the ground that the appellants had resorted to 'go slow' in the Sugar Factory, the Tribunal in a reference under S. 10 of the Act was in error in holding that the appellants had in fact resorted to 'go slow' tactics and the respondent was justified in discharging them from service. The specific contention raised was that where no domestic enquiry is held before terminating services of workman as required by the Standing Orders all that the Tribunal was concerned with was to decide whether the discharge of the workman was justified or not and that it was no part of the duty of the Tribunal to decide that there was go slow which would justify the order of discharge. Negating this contention, the Court held as under (at p. 1808 of AIR):-

"It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held (see *Indian Iron and Steel Co. v. Their Workmen*, (1958) SCR 667: (AIR 1958 SC 130)), but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this

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connection refer to *M/s. Sasa Musa Sugar Works (P.) Ltd. v. Shobrati Khan*, (1959) Supp SCR 836: (AIR 1959 SC 923); *Phulbari Tea Estate v. Its Workmen*, (1960) 1 SCR 32: (AIR 1959 SC 1111); and the *Punjab National Bank Ltd. v. Its Workmen*, (1960) 1 SCR 806: (AIR 1960 SC 160). These three cases were further considered by this Court in *Bharat Sugar Mills Ltd. v. Shri Jai Singh*, (1962) 3 SCR 684, and reference was also made to the decision of the Labour Appellate Tribunal in *Shri Ram Swarath Sinha v. Belaund Sugar Co.*, (1954) Lab AC 697. It was pointed out that 'the important effect of commission to hold an enquiry was merely this: that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out.' It is true that three of these cases, except *Phulbari Tea Estate's* case, were on applications under S. 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under S. 33 or on a reference under S.10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. *Phulbari Tea Estate's* case was on a reference under S. 10, and the same principle was applied there also, the only difference being that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

19. The Court rejected the contention that as there was no enquiry in this case it was not open to the respondent company to justify the discharge before the Tribunal. It may be noted that in the situation as was disclosed in this case there was no question of deciding a preliminary issue and then giving an opportunity to the employer to adduce additional evidence justifying the punitive action on merits. This Court went into the allegations of go-slow tactics resorted by the workmen as canvassed on behalf of the employer and agreed with the finding of the Tribunal that allegations were proved and accordingly upheld the order of discharge and affirmed the Award.

20. In *State Bank Of India v. R. K. Jain*, (1972) 1 SCR 755: (1972 Lab. IC 13), in a reference made by the Central Government the Industrial Tribunal held that the respondent R. K. Jain was not afforded a reasonable opportunity to produce evidence in his defence during the enquiry and that the management was not justified in terminating his service on the basis of the report of the enquiry officer. This Award was questioned in an appeal to this Court, *inter alia*, on the ground that even assuming that the domestic enquiry conducted by the Bank was in any manner vitiated, the Tribunal erred in law in not giving an opportunity to the management to adduce evidence before the Tribunal to establish the validity of the order of discharge. The contention in terms raised was that the Tribunal has first to consider whether the domestic enquiry on the basis of which the order of



termination has been passed has been conducted properly and bona fide by the management and if it comes to the conclusion that the domestic enquiry is vitiated, it is only then that the stage is set for giving an opportunity to management to adduce evidence before the Tribunal to support the order of termination. In support of this contention reliance was placed on the decision of a Division Bench of the Orrisa High Court in *M/s Hindustan Steel Ltd. v. Their workmen*, 1970 Lab. IC 102. A contrary view taken by the Madhya Pradesh High Court in *Madhya Pradesh State Road Transport Corporation v. Industrial Court*, Madhya Pradesh, 1970 Lab IC 510 was also brought to the notice of the Court. Attention of the Court was also drawn to a decision of a learned single Judge of the Delhi High Court in *Prem Nath Motors Workshop Pvt. Ltd. v. Industrial Tribunal, Delhi*, (1971) 22 Fac LR 370, which accepted the view of Madhya Pradesh High Court. The conflict of decisions may be noticed first. The Orrisa High Court was of the opinion that

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there was no obligation in law on the part of the Labour Court to indicate its mind about the infirmities in the enquiry at any stage before it gave its findings and the Award. Contrary view expressed by the Madhya Pradesh and Delhi High Courts was that it is a healthy practice that after coming to the conclusion that the domestic enquiry was not proper the Industrial Tribunal or Labour Court should give an opportunity to the employer to produce evidence to satisfy the authority that the action taken by it is justified. Thus this Court in *R. K. Jain's* case was clearly seized of the conflict of opinion and the controversy raised was whether there was any obligation in law on the Industrial Tribunal or the Labour Court, notwithstanding that no such request was made by the employer, to call upon the employer to adduce additional evidence to sustain the charges after the formal preliminary order is recorded that either there was no domestic enquiry or the one held was defective. Negating this contention this Court held as under (at pages 26-27 of Lab IC):-

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgement. There may be cases where an inquiry has been held preceeding the order of termination or there may have been no enquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under those circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

21. The Court also in terms held that by and charge this Court was in agreement with the view expressed by the Orrisa High Court meaning thereby that no such obligation in law is fastened on the Labour Court or the Industrial Tribunal to indicate its mind about the infirmities in the enquiry before it gave its finding and the Award and then calling upon the employer to start the next round of leading evidence in its attempt to sustain the charges alleged against the workman.

22. If the matter were to rest here, the contention of the appellant must fail on precedent. But it was urged that



the point has been re-examined in later cases to which may now turn.

23. In *Delhi Cloth and General Mills Co. v. Ludh Budh Singh*, (1972) 3 SCR 29, (1972 Lab. IC 573), the appellant company questioned the correctness of the decision of the Industrial Tribunal refusing permission to dismiss the respondent as he was held guilty of misconduct in domestic enquiry conducted by the appellant. The question of

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seeking permission arose because S. 33 was attracted as an industrial dispute between the appellant company and its workmen was then pending before the Industrial Tribunal. Before the Tribunal pronounced its order rejecting the application for permission under S. 33, an application was made on the day next after the date on which the respondent filed his written statement before the Tribunal requesting in clear and unambiguous terms the Tribunal that in case the Tribunal held that the enquiry conducted by it was defective, it should be given an opportunity to adduce evidence before the Tribunal to justify the action proposed to be taken against the respondent. Neither party examined any witness before the Tribunal. The appellant merely produced the papers of enquiry. The Tribunal reached the conclusion that the enquiry proceedings had not been conducted against the respondent in accordance with the principles of natural justice and that the findings recorded by the enquiry officer were not in accordance with the evidence adduced before him. In accordance with these findings the Tribunal concluded that the appellant had not made out a case for permission for dismissing the respondent and the application was rejected. It may be noticed that there was no reference to the application made by the appellant for adducing additional evidence in the order rejecting permission and no order appears to have been made on the application whether it was granted or rejected. Before this Court the appellant contented that the Tribunal was in error in law in not permitting the appellant to adduce the evidence before it, to justify the action proposed to be taken against the respondent. After an exhaustive review of the decisions bearing on the question and affirming the ratio in *R. K. Jain's case* (1972 Lab. IC 13) this Court extracted the emerging principles from the review of decisions. Propositions 4, 5 and 6 would be relevant for the present discussion. They are as under (at pp. 589-590 of Lab. IC):-

"(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workmen that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly

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and the findings recorded therein are also proper.

(6) If the employer relies on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it."

24. The point worthy of note is that the contention of the appellant that there is something like an obligatory duty of the Industrial Tribunal to call upon the employer to adduce additional evidence if it so chooses after recording a specific finding on the preliminary issue whether there was no enquiry or the one held was defective has been, in terms and demonstrably negated. As a corollary a principle was enunciated that such an opportunity should be availed of by the employer by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been asked for by the management before the proceedings are closed the employer can make no grievance that the Tribunal did not provide such an opportunity. The ghost of any obligatory duty cast on a quasi-judicial authority, viz, Labour Court or Industrial Tribunal to notify one of the parties to the proceedings before it, what it should do or what are its rights and by what procedure it should prove its case, even when the party is a well entrenched employer, ably assisted by the best available talent in the legal profession, was laid to rest. We would presently examine Cooper Engineering Ltd. case (1975 Lab IC 1441) (SC) where the employer made some attempt to infuse life into that ghost but that decision rests on the facts of the case. In this case the fact that before the final order was pronounced by the Tribunal a written request was made on behalf of the employer for adducing additional evidence to sustain the charge on which the Tribunal appears to have passed no order, was held insufficient by this Court to entertain a contention that the employer was denied any such opportunity.

25. Reference was next made to Workmen of Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management (1973) 3 SCR 587: (1973 Lab IC 851). Contention raised therein was that by the introduction of S. 11A with its proviso in the Act the legislature has once and for ever put its final seal upon the controversy whether the employer who has failed to hold proper, legal and valid domestic enquiry before taking punitive action, was entitled to adduce fresh evidence when the matter is brought before the Labour Court or the Industrial Tribunal either under S. 10 or under S. 33 of the Act. The proviso to S. 11A provides that the Labour Court or the Industrial Tribunal in a proceeding under S. 11A shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. This contention was in terms negated by this Court observing that at the time of introducing S. 11A in the Act the legislature must have been aware of the long line of decisions of this Court enunciating several principles bearing on the subject and therefore it is difficult to accept that by a single stroke of pen by the expression used in the proviso to S. 11A all these principles were set at naught. This Court then exhaustively reviewed all the previous decisions bearing on the subject and formulated the principles emerging therefrom. The relevant principles are 4, 6, 7 and 8. They read as under:

"(4) Even if no enquiry has been held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and

(5) xx xx xx

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry conducted by an employer is found to be defective.

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(7) It has never been recognised that the Tribunal should straightway, without any thing more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct."

26. The noticeable feature of principle 8 is that an employer who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action should ask for it at the appropriate stage. If any such opportunity has been asked for the Tribunal has no power refuse. But it is not for a moment suggested that there is some duty or obligation as a matter of law cast upon the Tribunal to call upon the employer to adduce additional evidence even if no such opportunity is sought by the employer. At page 610 the Court has observed that the stage at which the employer has to ask for such an opportunity has been pointed out by the Court in *Delhi Cloth and General Mills Co. case* (1972 Lab IC 573) (SC) and the ratio of the decision was affirmed.

27. In the quest of the principle bearing on the subject we come to the last decision relying on which the Division Bench of the Calcutta High Court in *Letters Patent Appeal* allowed a contention to be raised for the first time and remanded the matter back to the Industrial Tribunal. It was said that the point decided by the Division Bench of the Calcutta High Court is no more *res integra* and is concluded by the decision in *Cooper Engineering Ltd. case* (1975 Lab IC 1441) (SC). In that case the workman was dismissed by the employer and industrial dispute arising out of the termination of service was referred to the Labour Court. The Labour Court found that the domestic enquiry was defective and directed reinstatement of the workman. In appeal by the employer company it was contended that the Labour Court failed to give an opportunity to the employer to adduce additional evidence to sustain the charge after recording the finding that the domestic enquiry held by the employer was defective. This Court referred to proposition Nos. 4, 5 and 6 in the *Delhi Cloth and General Mills Co. case* (1972 Lab IC 573) (SC) and propositions Nos. 4, 6, 7 and 8 in the case of *Workmen Firestone Tyre and Rubber Co. of India (P.) Ltd. case* (1973 Lab IC 851) (SC) and posed to itself a question as to what is the appropriate stage, specifically adverted to in the *Delhi Cloth and General Mills Co. case* when the Court is now required to seriously consider that the opportunity should be given to the employer to adduce evidence. The Court then recorded its opinion as under:

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceedings to raise the issue."

28. It was contended that this Court has in unambiguous and incontrovertible terms laid down that there is an obligatory duty in law fastened on the Labour Court or the Industrial Tribunal dealing with a case of punitive termination of service either under S. 10 or S. 33 of the Act, irrespective of the fact whether there is any such request to that effect or not, to raise a preliminary issue as to whether domestic enquiry alleged to have been held by the employer is proper or defective and then record a formal finding on it and if the finding is in favour of the workman the employer should be called upon which must demonstrate on record, without waiting for any such request

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or demand or pleading from the employer, to adduce further evidence to sustain the charge of misconduct if it so chooses to do. We are afraid that much is being read in to the observation of this Court which is not either expressly or necessary implication stated. There is nothing to suggest that in *Cooper Engineering Ltd. case* (1975 Lab IC 1441) this Court specifically overruled the decision in *R. K. Jain's case* (1972 Lab IC 13) where the in



terms negated the contention of the employer that there is an obligatory duty in law on the Labour Court or the Industrial Tribunal to give an opportunity to the employer irrespective of the fact whether it is asked for or not to adduce additional evidence after recording a finding on the preliminary issue that either no domestic enquiry was held or the one held was defective. It would be advantageous to refer to an observation of this Court in Delhi Cloth and General Mills Co. case at page 53 (of 1972-3 SCR 29): (1972 Lab IC 573 at p. 588) where after examining the ratio of the decision in R. K. Jain's case this Court held that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant therein had made no such request and that the contention that the Tribunal should have given an opportunity suo motu to adduce evidence was not accepted in the circumstances of that case. This observation in fact rejects the contention that there is any such obligatory duty cast by law on the Labour Court or the Industrial Tribunal to give such an opportunity to the employer and then leave it to the sweet will of the employer either to avail it or not. This view in R. K. Jain's case was re-affirmed in Delhi Cloth and General Mills Co. case and there is nothing in the decision in Cooper Engineering Ltd. case that that case overrules the two earlier decisions. It was not possible so to do because the decision in the Management of Ritz Theatre case (AIR 1963 SC 295) wherein even though the application for adducing additional evidence was given before the Tribunal passed its final order, this Court declined to interfere saying that such a request was made at a very late stage and that is the decision of three Judges and the decision in Cooper Engineering Ltd. case is equally a decision of three Judges. Further, the decision in Cooper Engineering Ltd. case does not propose to depart from the ratio of the earlier decisions because this Court merely posed a question to itself as to what is the appropriate stage at which the opportunity has to be given to the employer to adduce additional evidence, if it so chooses to do. Merely the stage is indicated, namely, the stage after decision on the preliminary issue about the validity of the enquiry. Cooper Engineering Ltd. case is not an authority for the proposition in every case coming before the Labour Court or Industrial Tribunal under S.10 or S.33 of the Act complaining about the punitive termination of service following a domestic enquiry that the Court or Tribunal as a matter of law must first frame a preliminary issue and proceed to decide the validity or otherwise of the enquiry and then serve a fresh notice on the employer by calling upon the employer to adduce further evidence to sustain the charges if it so chooses to do. No section of the Act or the Rules framed thereunder was read to pinpoint such an obligatory duty in law upon the Labour Court or the Industrial Tribunal. No decision was relied upon to show that such is the duty of the Labour Court or the Industrial Tribunal. This Court merely indicated the stage where such opportunity should be given meaning thereby if and when it is sought. This reading of the decision in Cooper Engineering Ltd. case is consistent with the decision in Ritz Theatre case because there as the application for the permission to adduce additional evidence was made at a late stage the Tribunal rejected it and this Court declined to interfere. Now, if the ratio of the Cooper Engineering Ltd. case is to be read to the effect that in every case as therein indicated it is an obligatory duty of the Industrial Tribunal or the Labour Court to give an opportunity after recording the finding on the preliminary issue adverse to the employer to adduce additional evidence it would run counter to the decision in Ritz Theatre case. Such is not the ratio in Cooper Engineering case. When read in the context of the propositions culled out in Delhi Cloth and General Mills Co. case and the Firestone Tyre and Rubber Co. of India (P) Ltd. case (1973 Lab IC 851) (SC) the decision in Cooper Engineering Ltd. case merely indicates

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the stage at which an opportunity is to be given but it must not be overlooked that the opportunity has to be asked for. Earlier clear cut pronouncements of the Court in R. K. Jain's case and Delhi Cloth and General Mills Co. case that this right to adduce additional evidence is a right of the management or the employer and it is to be availed of by a request at appropriate stage and there is no duty in law cast on the Industrial Tribunal or the Labour Court suo motu to give such an opportunity notwithstanding the fact that none was ever asked for are not even departed from. When we examine the matter on principle we would point out that a quasi-judicial Tribunal is under no such obligation to acquaint parties appearing before it about their right, more so in an adversary system which these quasi-judicial Tribunals have adopted. Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under S.10 or S.33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written

statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim, application or written statement, the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings.

29. Having examined the matter on precedent it would be worthwhile to examine the matter on principle. The Labour Court or Industrial Tribunal to which either a reference under S.10 or an application under S.33 for permission to take an intended action or approval of an action already taken is made, would be exercising quasi-judicial powers, which would imply that a certain content of the judicial power of the State is vested in it and it is called upon to exercise it (see *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.*, 1950 SCR 459 : (AIR 1950 SC 188)). A quasi-judicial decision presupposes an existing dispute between two or more parties and involves presentation of their case by the parties to the dispute and if the dispute between them is on a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of arguments by or on behalf of the parties on the evidence (see *Cooper v. Wilson*) (1937) 2 KB 309. Parties are arrayed before these quasi-judicial Tribunals either upon a reference under S. 10 or S. 33. There is thus a lis between the parties. There would be assertion and denial of facts on either side. With the permission of the Tribunal and consent of the opposite side, parties are entitled to appear through legal practitioners before these quasi-judicial Tribunals. The system adopted by these Tribunals is an adversary system, a word as understood in contra-distinction to inquisitorial system. This also becomes clear from Rule 10B (1) of the Industrial Disputes (Central) Rules, 1957 which provides that when a reference is made of the Labour Court or Industrial Tribunal, within two weeks of the date of receipt of the order of reference the parties representing workmen and the employer involved in the dispute shall file with the Labour Court or the Industrial Tribunal a statement of demands relying only upon issues which are included in the order of reference and shall also forward copy of such statement to each one of the opposite parties involved in the dispute. Sub-rule (2) provides that within two weeks of receipt of the statement referred to in sub-rule (1) the opposite party shall file its rejoinder with the Labour Court or the Industrial Tribunal as the case may be and simultaneously forward a copy thereof to the other party. Sub-rule (4) provides that the hearing of the dispute shall ordinarily be continued from day-to-day and arguments shall follow immediately after the closing of the evidence. Sub-rule (6) casts a duty on the Labour Court or the Industrial

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Tribunal, as the case may be, to make a memorandum of the substance of the proceedings of what the witnesses depose and such memorandum shall be written and signed by the Presiding Officer.

30. Rule 15 confers power to admit or call for evidence. Rule 16 enables the Labour Court or Industrial Tribunal to administer oath. Rule 60 prescribes the form of application to be made under S. 33. The application has to be in form J or K, as the case may be, and has to be an verification. The cause-title in the prescribed form requires that the applicant and the opposite party should be specifically described in the application. These forms are more or less analogous to a plaint in a suit and the reply to be filed would take more or less the form of a written statement. Where the parties are at variance for facility of disposal, issues will have to be framed. It is open to it to frame an issue and dispose it of as a preliminary issue as held in *M/s. Dalmia Dadri Cement Ltd. v. Its Workmen* 1970 Lab IC 350 (Punj). Parties have to lead evidence. S 11C confers power of a civil court under the Code of Civil Procedure on the Labour Court or Industrial Tribunal in respect of matters therein specified. The Labour Court or Tribunal would then proceed to decide the lis between the parties. It has to decide the lis on the evidence adduced before it. While it may not be hidebound by the rules prescribed in the Evidence Act it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a lis between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the lis on any extraneous considerations. Justice, equity and good conscience will inform its adjudication. Therefore, the Labour Court or the Industrial Tribunal has all the trappings of a Court.



31. If such be duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must take a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead the evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by the party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence. and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in *Tin Printers (Pvt.) Ltd. v. Industrial Tribunal* (1967) 2 Lab LJ 667 at p. 680 (Punj), commends to us. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question to proving something which is not pleaded. This is very elementary.

32. Can it for a moment be suggested that this elementary principle does not inform industrial adjudication? The answer must be an emphatic 'no'.

33. The employer terminates the service of a workman. That termination raises an industrial dispute either by way of an application under Section 33 of the Act by the employer or by way of a reference by the appropriate Government under Section 10. If an application is made by the employer as it is required to be made in the prescribed form all facts are required to be pleaded. If a relief is asked for in the alternative that has to be pleaded. In an application under Section 33 the employer has to plead that a domestic enquiry has been held and it is legal and valid. In the alternative it must plead that if the Labour Court or Industrial Tribunal comes to the conclusion that either there was no enquiry

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or the one held was defective, the employer would adduce evidence to substantiate the charges of misconduct alleged against the workman. Now, if no such pleading is put forth either at the initial stage or during the pendency of the proceedings there arises no question of a sort of advisory role of the Labour Court or the Industrial Tribunal unintended by the Act to advise the employer, a party much better off than the workman, to inform it about its rights, namely, the right to lead additional evidence and then give an opportunity which was never sought. This runs counter to the grain of industrial jurisprudence. Undoubtedly, if such a pleading is raised and an opportunity is sought, it is to be given but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings there is no duty cast by law or by the rules of justice, reason and fair play that a quasi-judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory by informing the employer of its rights, namely, the right to adduce additional evidence to substantiate the charges when it failed to make good the domestic enquiry and then to give an opportunity to it to adduce additional evidence. This, apart from being unfair to the workman, is against the principles or rules governing the procedure to be adopted by quasi-judicial Tribunal, against the grain of adversary system and against the principles governing decision of a lis between the parties arrived before a quasi-judicial Tribunal.

34. Having given our most anxious consideration to the question raised before us, and minutely examining the decision in *Cooper Engineering Ltd. case* (1975 Lab IC 1441) (SC) to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of a workman either under Section 10 or under Section 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic



enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Ltd. case merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges.

35. Viewed from this angle, in the present case there was neither a pleading in which any such claim for adducing additional evidence was made, nor any request was made before the Industrial Tribunal till the proceedings were adjourned for making the Award and till the Award was made. The case squarely falls within the ratio of Delhi Cloth and General Mills Co. case (1973 Lab IC 851) (SC). Therefore, the Division Bench of the Calcutta High Court was clearly in error in granting such a non-sought opportunity at the stage of the Letter Patent Appeal.

36. Accordingly, this appeal is allowed and the judgement of the Calcutta High Court in Letters Patent Appeal No. 80/74 is set aside and the Award of the Industrial Tribunal is restored with costs quantified at Rs. 2, 000/-.

Appeal allowed.

AIR 1979 SUPREME COURT 1666

(From: (1977) 79 Pun LR 681)

V. R. KRISHNA IYER AND R. S. PATHAK, JJ.

Special Leaves Petns, (Civil) Nos. 5228 and 5286 of 1977, D/- 16 -4 -1979.

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M/s Concord of India Insurance Co. Ltd., Petitioner v. Smt. Nirmala Devi and others, Respondents.

(A) Limitation Act (36 of 1963), S.5 - Condonation of delay - Automobile accident - Insurance Company - Appeal against Tribunal's award - Mistake of counsel in calculating period of limitation - Can be a sufficient cause - Condonation cannot be refused on ground that the manager of company is not an illiterate or so ignorant person who could not calculate period of limitation and that such appeals are filed by such companies daily.

(1977) 79 Punj LR 681, Reversed.

AIR 1971 Ker 211, Approved.

(Paras 6, 7)

(B) Constitution of India, Art.136 - Special leaves - Absence of manifest injustice or gross misappreciation or perversity in factual findings - On merits also no ground shown for intervention - Special leave petition dismissed.

(Paras 8)

Cases referred :

AIR 1972 SC 749

AIR 1971 Ker 211

Chronological Paras

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M/s P. P. Malhotra and R. N. Dikshit, Advocates, for Petitioner; Mr. S. K. Gambhir, Advocate, for Respondents.

Judgement

ORDER:- An explosive escalation of automobile accidents, accounting for more deaths than the most deadly diseases, has become a lethal phenomenon on Indian Roads everywhere. The jural impact of this tragic development on our legislatures, courts and law enforcing agencies is insufficient, with the result that the poor, who are, by and large, the casualty in most of these cases, suffer loss of life or limb and are deprived of expeditious legal remedies in the shape of reasonably quantified compensation promptly paid and this, even after compulsory motor insurance and nationalisation of insurance business. The facts of these special leaves petitions which we dismiss by this order, raise two serious issues which constrain us to make a speaking order. The first deals with legal rights, literacy in the case of automobile accidents and the processual modalities which secure redressal of grievances. The second relates to the consequences of negligence of counsel which misleads a litigant into delayed pursuit of his remedy.

2. Medieval roads with treacherous dangers and total disrepair, explosive increase of heavy vehicles often terribly overloaded and without cautionary signals, reckless drivers crazy with speed and tipsy with spirituous potions, non-enforcement of traffic regulations designed for safety but offering opportunities for systematised corruption and little else and, as a cumulative effect, mounting highway accidents demand a new dimension to the law of torts through no fault liability and processual celerity and simplicity in compensation claims cases. Social justice, the command of the Constitution is being violated by the State itself by neglecting road repairs, ignoring deadly overloads and contesting liability after nationalising the bulk of bus transport and the whole of general insurance business. The jurisprudence of compensation for motor accidents must develop in the direction of nofault liability and the determination of the quantum must be liberal not niggardly since the law values life and limb in free country in generous scales. In the present case, a doctor and his brother riding a motor cycle were hit, by a jeep driver and both were killed. The fatal event occurred in November 1971 but the Motor Accident Claims Tribunal delivered judgement five years later awarding sums of Rs. 80, 000/- and Rs. 73, 500/- to the two sets of claimants.

3. The delay of five years in such cases is a terrible commentary on the judicial process. If only no-fault liability, automatic reporting by the police who investigate the accident in a statutory pro forma signed by the claimants and forward to the tribunal as in Tamil Nadu and decentralised empowerment of such tribunals in every district coupled with informal procedures and liberation from court-fees and the sophisticated rules of evidence and burden of proof were introduced-easy and inexpensive if the State has the will to help the poor who mostly die in such accidents-law's delays in this compassionate jurisdiction can be banished. Social justice in action is the measure of the State's constitutional sensitivity. Anyway, we have made these observations hopefully to help focus the attention of the Union and the States.

4. The nationalised insurance company appealed to the High Court against the award. We have no doubt

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that the finding on both the culpability and the quantum as rendered by the trial court are correct. But the High Court dismissed the appeal on the ground of delay, dismissing the application of the petitioner for condonation under Section 5 of the Limitation Act.

5. The Accident Claims Tribunal pronounced its award on September, 15, 1976, after making the necessary computations and deductions. The appeal had to be filed on or before January 19, 1977 but was actually filed 30 days later. Counsel for the petitioner is stated to have made the mistake in the calculation of the period of limitation. He had intimated the parties accordingly with the result that the petitioner was misled into instituting the appeal late. The High Court took the view that the lawyer's ignorance about the law was no ground for condonation of delay. Reliance was placed on some decisions of the Punjab High Court and there was reference also to a ruling of the Supreme Court in AIR 1972 SC 749. The conclusion was couched in these words:

"The Assistant Divisional Manager of the Company-appellant is not an illiterate or so ignorant person who could not calculate the period of limitation. Such like appeals are filed by such companies daily. The facts of this case clearly, show, as observed earlier, that the mistake is not bona fide and the appellant has failed to show sufficient cause to condone the delay."



6. We are not able to agree with this reasoning. A company relies on its Legal Adviser and the Manager's expertise is in company management and not in law. There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for lawman or if there is incomprehensible indifference the shield of legal opinion may still be vulnerable. The correct legal position has been explained with reference to the Supreme Court decision in a judgement of one of us in AIR 1971 Ker 211 (at p. 215):

"The law is settled that mistake of Counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or as merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have seen quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it alibet on a wrong reading of the situation."

"The High Court took the view that Mr. Raizada being an Advocate of 34 year's standing could not possibly make the mistake in view of the clear provisions on the subject of appeals existing under Section 39 (1) of the Punjab Court Act and therefore, his advice to file the appeal before the District Court would not come to the rescue of the appellant under Sec. 5 of the Limitation Act. The Supreme Court upset this approach."

"I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on questions of law by courts are sometimes wrong. An amount of latitude is expected in such cases for, to err human and laymen, as litigants are, may legitimately lean on expert counsel in legal as in other departments, without probing the professional competence of the advice. The court must of course, see whether, in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause when an application under Section 5 of the Limitation Act is being considered. The State has not acted improperly in relying on its legal advisers."

7. We have clarified the legal position regarding the propriety and reasonableness of companies and other persons relying upon legal opinion in the matter of computation of limitation since it is a problem which may arise frequently. If Legal Adviser's opinions are to be subjected by company managers to further legal scrutiny of

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their own, an impossible situation may arise. Indeed Government, a large litigant in this country, may find itself in difficulty. That is the reason why we have chosen to explain at this length the application of Section 5 vis-a-vis counsel's mistake.

8. This does not automatically secure a visa for the petitioner into this Court under Article 136. There must be manifest injustice or gross misappreciation or perversity in factual findings. We have examined the merits of the matter to the extent available on the record and have heard counsel for the petitioner. He has hardly convinced us that the merits of the case call for any intervention at all. In this view we are constrained to dismiss the Special Leave Petitions now that we have expressed ourselves on both the points dealt with above.

Petitions dismissed

AIR 1975 SUPREME COURT 1331 "Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi"

(From Gujarat * and 1974 Lab IC 223 (Delhi))

Coram : 5 A. N. RAY, C.J.I., K. K. MATHEW, Y. V. CHANDRACHUD, A. ALAGIRISWAMI AND A. C. GUPTA, JJ.

Civil Appeals Nos. 2137 and 1879 of 1972, 1655 of 1973 and 115 of 1974, D/- 21 -2 -1975.

(1) Civil Appeal No. 2137 of 1972.

Sukhdev Singh and others. Appellants v. Bhagatram Sardar Singh Raghuvanshi and another, Respondents.

(2) Civil Appeal No. 1655 of 1973.

The Oil and Natural Gas Commission, Appellant v. The Association of Class II Officers, O.N.G.C. and others, Respondents.

(3) Civil Appeal No. 1879 of 1972.

The L.I.C. Ltd. and another. Appellants v. Shaym Lal Sharma, Respondent.

(4) Civil Appeal No. 115 of 1974.

The Industrial Finance Corpn. Employees Association, Appellant v. The Industrial Finance Corpn, and others, Respondents.

Constitution of India, Art.12, Art.14, Art.16 and Art.226 - STATE - LIFE INSURANCE CORPORATION - "Authorities" in Art. 12 - Meaning of - Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation are 'authorities' within Art. 12 - Rules and Regulations framed by these statutory Corporations have the force of law - Their employees have a statutory status and are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions.

Oil and Natural Gas commission Act (43 of 1959), S.31, S.32.

Industrial Finance Corporation Act (15 of 1948), S.42, S.43.

Life Insurance Corporation Act (31 of 1956), S.48, S.49.

1974 Lab. I. C..223 (Delhi); and Decision of the High Court in L.I.C. Ltd. v. Shyam Lal Sharma, Reversed.

AIR 1970 SC 1244 and AIR 1971 SC 1828 Overruled.

Per majority - (A. Alagiriswami, J. Contra.)

Rules and Regulations framed by the Oil and Natural Gas Commission,

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Life Insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. However, these employees are not servants of the Union or the State. These statutory bodies are "authorities" within the meaning of Art. 12. The employees of these statutory corporations are entitled to claim protection of Arts. 14 and 16. 1974 Lab. I.C. 223 (Delhi); Reversed. Judgment of the High Court in L.I.C. Ltd. v. Shyam Lal Sharma, in so far as it held that the regulations have not the force of law, Reversed. AIR 1970. SC 1244 and AIR 1971 SC 1828, Overruled. (Paras 63, 67, 71, 195, 196, 197)

The expression 'other authorities' in Art. 12 is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India. The expression 'other authorities' will include all constitutional or statutory authorities on whom powers are conferred by law. AIR 1967 SC 1857 Foll. (Para 36)

There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of same group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations. (Para 33)

The Life Insurance Corporation Act as well as the Industrial Finance Corporation Act confer power on the Corporation to make regulations as to the method of recruitment of employees and the terms and conditions of service of such employees or agents. The Oil and Natural Gas Commission Act 1959 under Section 12 states that the functions and terms and conditions of service of employees shall be such as may be provided by regulations under the Act. Regulations under the 1959 Act provide inter alia the terms and conditions of appointment and scales of pay of the employees of the Commission. The regulations containing the terms and conditions of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory. These statutory bodies have no free hand in framing the conditions and terms of service of their employees. These bodies are bound to apply the terms and conditions as laid down in the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions. These regulations are not only binding on the authorities but also on the public. (Case Law discussed.) (Paras 22, 23)

The Oil and Natural Gas Commission is owned by the Government. It is a statutory body and not a company. The Commission has the exclusive privilege of extracting petroleum. The management is by the Government. It can be dissolved only by the Government. The Life Insurance Corporation is owned by the Government. The Life Insurance business is nationalised and vested in the Corporation. No other insurer can carry on life insurance business. The management is by the Government. The dissolution can be only by the Government. The Industrial Finance Corporation is under the complete control and management of the Central Government. Citizens cannot be

shareholders. Certain specified institutions like Scheduled Banks, Insurance Companies, Investment Trusts and Cooperative Banks may apply for the shares. The Central Government may acquire shares held by shareholders other than the Development Bank. After such acquisition, the Government may direct that the entire

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undertaking of the Corporation shall be vested in the Development Bank. The Corporation cannot be dissolved except by the Government. (Paras 60, 61, 62)

Whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute. (Para 33)

Per A. Alagiriswami. J. (Contra)

The mere fact that regulations are made in respect of the conditions of service, of the employees of a certain institution or organisation does not mean that those conditions are statutory. No doubt these are the conditions of service applying to their employees. But if there is breach of those conditions it cannot be said that there is a breach of any statutory provision. (Para 162)

Cases Referred : Chronological Paras

AIR 1973 SC 855 = (1973) 1 SCC 409 26, 32, 189

AIR 1971 SC 1828 = (1971) 2 SCC 192 = 1971 Lab IC 1129 26, 30, 31, 188, 189

(1971) 1 WLR 1578 = (1971) 2 All ER 1278 118

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AIR 1970 SC 245 = (1970) 1 SCR 205 185

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 (1944) 323 US 192 = 89 Law ed 173 101
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 (1937) 304 US 405 = 82 Law ed 1427 105
 (1934) 293 US 214 = 79 Law ed 291 170
 (1933) 292 US 360 = 78 Law ed 1307 104, 170
 (1931) 286 US 73 = 76 Law ed 984 102
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(1926) 273 US 418 = 71 Law ed 718 102

(1926) 273 US 536 = 71 Law ed 759 102

(1924) 1 Ch 483 = 93 LJ Ch 209 120

(1922) 2 Ch 490 = 91 LJ Ch 829 20

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(1919) 1 Ch 387 = 88 LJ Ch 195 20

(1905) 199 US 437 = 50 Law Ed 261 105

(1902) AC 484 = 71 LJ KB 857 127

(1901) 2 KB 781 = 70 LJ KB 860 127

(1898) 2 QB 91 = 67 LJ QB 782 17, 30, 174

(1897) AC 22 = 66 LJ Ch 35 127

(1891) 1 QB 349 = 60 LJ QB 123 17

(1881) 109 US 3 = 27 Law ed 835 95

(1820) 6 Wheat 204 = 5 Law ed 242 170

(1819) 4 Wheat 316 = 4 Law ed 579 84

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299 N. Y. 512 100

Mr. F. S. Nariman, Addl. Sol. Gen. (In C.A. No. 2137 of 1972) Mr. A. K. Sen, Sr. Advocate (In C.A. No. 1655 of 1973) (Mr. B. Dutta, Advocate with him), for Appellants. Mr. Pramod Swarup, Advocate (In C.A. No. 1879 of 1972) for Appellant; Mr. M. K. Ramamurthy, Sr. Advocate, (M/s. Janardan Sharma and Jitendra Sharma, Advocates with him), for Appellant (In C.A. No. 115 of 1974). M/s. R. K. Garg, S. C. Agarwala, S. S. Bhatnagar and V. J. Francis, Advocates of M/s. Ramamurthy and Co. (In C.A. No. 2137 of 1972) for Respondent No. 1; Mr. M. K. Ramamurthy Sr. Advocate, (Mr. J. Ramamurthy, Advocate with him), for Respondents (In C.A. Nos. 1655 of 1973 and 1879 of 1972 and for Intervener (In C.A. No. 1655 of 1973). Mr. F. S. Nariman Addl. Sol. Gen. of India (Mr. I. N. Shroff, Advocate with him), for Respondent No. 1 (In C.A. No. 115 of 1974), Mr. P. K. Pillai, Advocate, (In C.A. No. 2137 of 1972) for Intervener; Mr. F. S. Nariman Addl. Sol. Gen. of India (M/s V. J. Taraporewala, O. C. Mathur, Mohan Prasad Jha and K.J. John. Advocate with him), for Applicant/ Intervener (Air India).

Judgments of the Court were delivered by

* Spl. Civil Appln. No. 1470 of 1968, D/- 14-7-1972 and L.P.A- No. 95 of 1973, D/- 15-10-1973 - Guj.

Judgement

A. N. RAY, C. J.: (For himself and on behalf of Y. V. Chandrachud and A.C. Gupta, JJ.):— There are two questions for consideration in these appeals. First, whether an order for removal from service contrary to regulations, framed under the Oil and Natural Gas Commission Act, 1959; the Industrial Finance Corporation Act, 1948; and the Life Insurance Corporation Act, 1956 would enable the employees to a declaration against the statutory corporation of continuance in service or would only give rise to a claim for damages. Second, whether an employee of a statutory corporation is entitled to claim protection of Articles 14 and 16 against the Corporation. In short the question is whether these statutory corporations are authorities within the meaning of Article 12.

2. The statutes for consideration are the Oil and Natural Gas Commission Act, 1959; the Industrial Finance Corporation Act, 1948; and the Life Insurance Corporation Act, 1956. The question which really falls for decision is whether regulations framed under these statutes have the force of law.

3. The Oil and Natural Gas Commission Act, 1959 hereinafter referred to as the 1959 Act established the Commission as a body corporate having perpetual succession and a common seal. The composition of the Commission is the Chairman, and not less than two, and not more than eight, other members appointed by the Central Government. One of the members shall be a whole-time Finance Member in charge of the financial matters relating to the Commission. The Central Government may, if it thinks fit, appoint one of the members as Vice-Chairman of the Commission. Under Section 12 of the 1959 Act the Commission may, for the purpose of performing its functions or exercising its powers, appoint such number of employees as it may consider necessary. The functions and the terms and conditions of service of such employees shall be such as may be provided by regulations made under the 1959 Act. There was an existing organisation set up in pursuance of a resolution of the Government of India No. 22/29/55-C and G dated 14 August 1956. Every person employed by the said existing organisation before the establishment of the Commission became an employee of the Corporation in accordance with the provisions contained in Section 13 of the 1959 Act.

4. Sections 31 and 32 of the 1959 Act are important. Section 31 states that the Central Government may, by notification in the Official

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Gazette, make rules to give effect to the provisions of the Act. The rules provide inter alia for the term of office of, and the manner of filling casual vacancies among the members, and their conditions of service; the disqualifications for membership of the Commission and the procedure to be followed in removing a member who is or becomes subject to any disqualification; the procedure to be followed in the discharge of functions by members; the conditions subject to which and the mode in which contracts may be entered into by or on behalf of the Commission and some other matters. Every rule made under Section 31 of the 1959 Act shall be laid as soon as may be before each House of Parliament as mentioned in the Section. Both Houses may agree to or annul the rule or modify it.

5. Under Section 32 of the 1959 Act the Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the Act

and the rules made thereunder, for enabling it to discharge its functions under the Act. The regulations provide inter alia for the terms and conditions of appointment and service and the scales of pay of employees of the Commission; the time and place of meetings of the Commission, the procedure to be followed in regard to the transaction of business at such meetings; the maintenance of minutes of meetings of the Commission and the transmission of copies thereof to the Central Government; the persons by whom, and the manner in which payments, deposits and investments may be made on behalf of the Commission; the custody of moneys required and the maintenance of accounts. The Central Government may amend, vary or rescind any regulation which it has approved, and thereupon the regulation shall have effect accordingly but without prejudice to the exercise of the powers of the Commission under sub-section (1) of Section 32.

6. The Life Insurance Corporation Act, 1956 hereinafter referred to as the 1956 Act established the Corporation under Section 3 of the Act. Under Section 11 of the 1956 Act existing employees of an insurer whose controlled business was transferred to and vested in the Corporation and who were employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day became on and from the appointed day employees of the Corporation. Section 11 of the 1956 Act further states that the employees of the Corporation would hold office upon the same terms and with the same rights and duties as they would have held on the appointed day. These employees were further to continue under the 1956 Act unless and until their employment was terminated or until the remuneration, terms and conditions were duly altered by the Corporation

7. The two important sections of 1956 Act are Sections 48 and 49. Section 48 states that the Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. The rules inter alia provide for the term of office and the conditions of service of members; the jurisdiction of the Tribunals constituted under Section 17 of the Act, the manner in which and the persons to whom, any compensation under this Act may be paid; the conditions subject to which the Corporation may appoint employees. All rules made shall be laid as stated in the section before both Houses of Parliament and shall be subject to such modification as Parliament may make.

8. Section 49 of the 1956 Act states that the Corporation may, with the previous approval of the Central Government, by notification in the Gazette of India, make regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act. The regulations may provide inter alia for the powers and functions of the Corporation which may be delegated to the Zonal Managers; the method of recruitment of employees and agents, of the Corporation and the terms and conditions of service of such employees or agents; the terms and conditions of service of persons who have become employees of the Corporation under Section 11

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of the Act; the number, term of office and conditions of service of members of Boards constituted under Sec. 22 of the Act; the manner in which the Fund of the Corporation shall be maintained; the form and manner in which policies may be issued and contracts binding on the Corporation may be executed.

9. The Industrial Finance Corporation Act, 1948 hereinafter referred to as the 1948 Act establishes the Corporation under Section 3 of the Act. The superintendence of the business of the Corporation shall be entrusted to a Board of Directors. Section 42 of the 1948 Act enacts that the Central Government may make rules in consultation with the Development Bank not inconsistent with the provisions of this Act and to give effect to the provisions of the Act and where there is any inconsistency with rules and regulations the rules shall prevail. The rules under the Act are to be laid before each House of Parliament in the same manner as in the Oil and Natural Gas Commission Act. Section 43 of the 1948 Act enacts that the Board may with the previous approval of the Development Bank make regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act. The Development Bank means the Industrial Development Bank established under the Industrial Development Act, 1964. The shares of the Central Government in the Corporation shall stand transferred to the Development Bank when the Central Government shall so notify. The regulations provide inter alia for the holding and conduct of elections under this Act including the final decision of doubts or disputes regarding the validity of the election; the manner in which and the conditions subject to which the shares of the Corporation may be held and transferred; the manner in which general meetings shall be convened, the procedure to be followed thereat; the duties and conduct, salaries, allowances and conditions of service of officers and other employees and of advisers and agents of the Corporation.

10. The contentions on behalf of the State are these. Regulations are framed under powers given by the statute affecting matters of internal management Regulations do not have a statutory binding character. Terms and conditions of employment as laid down in the regulations are not a matter of statutory obligations. Regulations are binding not as law but as contract. Regulations have no force of law. Regulations provide the terms and conditions of employment and thereafter the employment of each person is contractual.

11. The contentions on behalf of the employees are these. Regulations are made under the statute. The origin and source of the power to make regulations is statutory. Regulations are self binding in character. Regulations have the force of law inasmuch as the statutory authorities have no right to make any departure from the, regulations.

12. Rules, Regulations, Schemes By-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.

13. In England the Statutory instruments (Confirmatory Powers) Order, 1947 contemplates orders in Council or other instruments which are described as orders. The Rules Publication Act 1893 in England defines "rule making authority" to include every authority authorised to make any statutory rules. Statutory rules are defined there as rules, regulations or by-laws made under any Act of parliament, in England. Orders are excluded from the statutory definition of statutory rules as being administrative. In England regulation is the term most popularly understood and the one favoured

by the Committee on Ministers' Powers, who suggested that regulations should be used for substantive law and rules for procedural law, while orders should be

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reserved to describe the exercise of executive power or the taking of a Judicial or quasi judicial decision (See Craies on Statute law, 7th Ed. at p. 303). The validity of statutory instruments is generally a question of vires, i.e., whether or not the enabling power has been exceeded or otherwise wrongfully exercised.

14. Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute, By-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rule.

15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

16. In England subordinate legislation has, if validly made, the full force and effect of a statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the Courts.

17. Subordinate legislation has, if validly made, the full force and effect of a statute. That is so whether or not the statute. under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing, the result of a breach thereof is, in the absence of provision to the contrary the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorises or requires the doing of any act the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. *Re. Langlois and Biden*, (1891) 1 QB 349 and *Kruse v. Joshnson*, (1898) 2 QB 91.

18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a "public agency" has been defined as an agency endowed with governmental or public functions.' It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred by

the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.

19. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament and can be taken

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away by Parliament. The legislative function is the making of rules. Some Acts of Parliament decide particular issues and do not lay down general rules.

20. The justification for delegated legislation is three fold. First, there is pressure on parliamentary time. Second, the technicality of subject-matter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs.

21. The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations.

22. Another characteristic of law is its content. Law is a rule of general conduct while administrative instruction relates to particular person. This may be illustrated with reference to regulations under the Acts forming the subject matter of these appeals. The Life Insurance Corporation Act as well as the Industrial Finance Corporation Act confer power on the Corporation to make regulations as to the method of recruitment of employees and the terms and condition of service of such employees or agents, The Oil and Natural Gas Commission Act under Section 12 states that the functions and terms and conditions of service of employees shall be such as may be provided by regulations under the Act. Regulations under the 1959 Act provide inter alia the terms and conditions of appointment and scales of pay of the employees of the Commission. The regulations containing the terms and conditions of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory.

23. The noticeable feature is that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the regulations. The statutory bodies are not free to make such terms as

they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissing employees. These regulations in the statutes are described as "statute" fetters on freedom of contract". The Oil and Natural Gas Commission Act in Section 12 specifically enacts that the terms and conditions of the employees may be such as may be provided by regulations. There is a legal compulsion on the Commission to comply with the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions. In other statutes under consideration, viz., the Life Insurance Corporation Act and the Industrial Finance Corporation Act though there is no specific provision comparable to Section 12 of the 1959 Act the terms and conditions of employment and conditions of service are provided for by regulations. These regulations are not only binding on the authorities but also on the public.

24. Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power. Second, the executive power of a State is not authorised to frame rules under Article 162. This Court held that the Public Works Department Code was not a subordinate legislation (See *G. J. Fernandez v. State of Mysore*, (1967) 3 SCR 636 = (AIR 1967 SC 1753).

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The rules under Article 309 on the other hand constitute not only the constitutional rights of relationship between the State and the Government servants but also establish that there must be specific power to frame rules and regulations.

25. The Additional Solicitor General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under, the Companies Act. The fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. A Company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the Statutes creating such bodies. Regulations in Table-A of the Companies Act are to be adopted by a company. Such adoption is a statutory requirement. A Company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A Company cannot exercise powers unless the company follows the statutory provisions. The provision in the Registration Act requires registration of instruments. The provisions in the Stamp Act contain provisions for stamping of documents. The non-compliance with statutory provisions will render a document to be of no effect. The source of the power for making rules and regulations in the case of Corporation created by a statute is the statute itself. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

26. The character of regulations has been decided by this Court in several decisions. One group of decisions consists of *S. R. Tewari v. District Board Agra*, (1964) 3 SCR 55 = (AIR 1964 SC 1680); *Life Insurance Corporation of India v. Sunil Kumar Mukherjee* (1964) 5 SCR 528 = (AIR 1964 SC 847); *Calcutta Dock Labour Board v. Jaffar Imam* (1965) 3 SCR 453 = (AIR 1966 SC 282); *Mafatlal Narandas Barot v. Divisional Controller S.T. Mehsana* (1966) 3 SCR 40 = (AIR 1966 SC 1364); *The Sirsi*

Municipality v. Cecelia Kom Francis (1973) 1 SCC 409 - (AIR 1973 SC 855); U. P. State Warehousing Corporation v. C. K. Tyagi, (1970) 2 SCR 250 = (AIR 1970 SC 1244) and Indian Airlines Corporation v. Sukhdeo Rai (1971) 2 SCC 192 = (AIR 1971 SC 1828).

27. In Narandas Barot's case, (1966) 3 SCR 40 = (AIR 1966 SC 1364) this Court held that the termination of services by Corporation created by a statute without complying with the requirements of the regulations framed by the Corporation under the Statute governing conditions of the employees of the Corporation was bad. The reason is that the termination contravened the provisions contained in the regulations.

28. In Tewari's case, (1964) 3 SCR 55 = (AIR 1964 SC 1680) the termination of the employment of Tewari was challenged on the ground that the resolution of the District Board terminating the services was invalid. The High Court dismissed Tewari's application under Article 226 in limine. This Court held that the Courts are invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of the mandatory obligation imposed by statute. The District Boards Act conferred power upon the State Government by S. 172 to make rules under the Act. The District Board relied on a notification headed "Regulation regarding dismissal, removal or reduction of officers and servants of District Boards". It was treated as a rule inasmuch as Section 173 (2) of the District Boards Act which conferred power to frame regulations did not confer any power to frame powers regulating the exercise of the power of dismissal of officers or servants of the Board. This Court held that under the rules dismissal, removal or, reduction of an officer or servant might be effected only after affording him a reasonable opportunity of showing cause against the action proposed to be taken in

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regard to him. In Tewari's case this Court also said that the order of dismissal involving punishment must be exercised consistently with the rules or regulations framed under the Statute.

29. In the Life Insurance Corporation case, (1964) 5 SCR 528 (AIR 1964 SC 847) there were regulations framed under the Act. Clause 4 (3) of the Regulations prescribed that in judging a Field Officer's work, the Corporation shall observe the principles contained in the circular issued by the Managing Director on 2 December, 1957. Paragraph 4 (h) of the circular which became an integral part of the regulations inter alia stated that where the Committee of its own decided that the poor performance of a Field Officer was not due to circumstances beyond his control or that he had made no efforts and not shown inclination or willingness to work the services of such Field Officer would be terminated. There was also in existence a Field Officer's order which was issued in exercise of the powers conferred on the Central Government by Section 11 (2) of the Act. Clause 10 of the order provided for penalties and termination of service. The contention of the employee was that the termination of service could be brought about only under clause 10 of the Order. This Court held that the regulations to be framed by the Corporation were not to be inconsistent either with the Act or with orders made under Section 11 (2) of the Act. The circular which was a part of the regulations under cl. 4 (3) thereof and clause 10 of the order were reconciled by this Court by stating that paragraph 4 (h) of the circular could be availed of to terminate the services of the officers but such termination was to be effected in the manner prescribed by the clause 10. The termination was not in accordance with either clause 10 (a) or (b) of the order. Therefore, the termination was invalid. The Life Insurance case(supra) recognised regulations framed under the Act to have the force of law.

30. In the Indian Airlines Corporation case, (1971) 2 SCC 192 = (AIR 1971 SC 1828) this Court said that there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the employment could be exercised the employee could not contend that he was entitled to a declaration that the termination of his employment was null and void. In the Indian Airlines Corporation case reliance was placed upon the decision of Kruse v. Johnson (1898) 2 QB 91 for the view that not all by-laws have the force of law. This Court regarded regulations as the same thing as bylaws. In (1898) 2 QB 91 the Court was simply describing the effect that the county by-laws have on the public. The observations of the Court in (1898) 2 QB 91 that the by-law "has the force of law within the sphere of its legitimate operation" are not qualified by the words that it is so "only when affecting the public or some section of the public. . . ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance." In this view a regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally, apply to the regulations and any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent legislature.

31. In U. P. Warehousing Corporation and Indian Airlines Corporation cases, (1970) 2 SCR 250 = (AIR 1970 SC 1244) and (1971) 2,SCR 192 = (AIR 1971 SC 1828) the terms of the regulations were treated as terms and conditions of relationship between the Corporation and its employees. That does not lead to the conclusion that they are of the same nature and quality as the terms and conditions laid down in the contract of employment. Those terms and conditions not being contractual are imposed by one kind of subordinate legislation, viz., regulations made in exercise of the power conferred by the statute which constituted that Corporation. Terms

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of the regulations are not terms of contract. In the Indian Airlines Corporation case under Section 45 of the Air Corporations Act, 1953, the Corporation had the power to make regulations not inconsistent with the Act and the rules made by the Central Government thereunder. The Corporation had no power to alter or modify or rescind the provisions of these regulations at its discretion, which it could do in respect of the terms of contract that it may wish to enter with its employees independent of these regulations. So far as the terms of the regulations are concerned, the actions of the Corporation are controlled by the Central Government. The decisions of this Court in U. P. Warehousing Corporation and Indian Airlines Corporation are in direct conflict with the decision of this Court in Narandas Barot's case, (1966) 3 SCR 40 = (AIR 1966 SC 1364) which was decided by the Constitution Bench.

32. In (1973) 1 SCC 409 = (AIR 1973 SC 855) the dismissal was held to be contrary to Rule 143 framed under Section 46 of the Bombay District Municipalities Act. This Court held that in regard to the master-servant cases in the employment of the State or of other public or local authorities or bodies created under statute, the courts have decided in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements on grounds which are not sanctioned or supported by statute the courts

may exercise jurisdiction to declare the act of dismissal to be a nullity. The ratio is that the rules or the regulations are binding on the authority.

33. There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of same group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

34. On behalf of the State it is contended that these Corporations cannot be said to be "other authority" contemplated in Article 12 for two principal reasons. First one of the attributes of a State is making laws. The State exercises governmental functions and the executive power of the State is co-extensive with the legislative power of the State. Second, authority as contemplated in Article 12

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means a body of persons established by statute, who are entitled as such body to command obedience and enforce directions issued by them on pain of penalty for violation. On these grounds it was said that these corporations cannot make laws like a State and cannot enforce directions.

35. The State undertakes commercial functions in combination with governmental functions in a welfare State. Governmental function must be authoritative. It must be able to impose decision by or under law with authority. The element of authority is of a binding character. The rules and regulations are authoritative because these rules and regulations direct and control not only the exercise of powers by the Corporations but also all persons who deal with these corporations.

36. This Court in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal*. (1967) 3 SCR 377 = (AIR 1967 SC 1857) said that an "authority" is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. The expression "other authorities" in Article 12 has been held by this Court in the *Rajasthan Electricity*

Board case to be wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India. This Court further said referring to earlier decisions that the expression "other authorities" in Art. 12 will include all constitutional or statutory authorities on whom powers are conferred by law. The State itself is envisaged under Article 298 as having the right to carry on trade and business. The State as defined in Article 12 is comprehended to include bodies created for the purpose of promoting economic interest of the people. The circumstance that the statutory body is required to carry on some activities of the nature of trade or commerce does not indicate that the Board must be excluded from the scope of the word "State". The Electricity Supply Act showed that the Board had power to give directions, the disobedience of which is punishable as a criminal offence. The power to issue directions and to enforce compliance is an important aspect.

37. The concurring judgment in the Rajasthan Electricity Board case, (1967) 3 SCR 377 = (AIR 1967 SC 1857) said that the Board was invested by statute with extensive powers of control over electricity undertakings. The power of the Board to make rules and regulations and to administer the Act was said to be in substance the sovereign power of the State delegated to the Board.

38. In the British Broadcasting Corporation v. Johns (Inspector of Taxes) (1965) 1 Ch. 32 it was said that persons who are created to carry out governmental purposes enjoy immunity like Crown servants. Government purposes include the traditional provinces of Government as well as non-traditional provinces of Government if the Crown has constitutionally asserted that they are to be within the province of government. The British Broadcasting Corporation was held not to be within the province of government because broadcasting was not asserted by the government to be within the province of government. The Wireless Telegraphy Act provided for regulation of wireless telegraphy by a system of licences. The Court gave two reasons as to why the Broadcasting Corporation was not within the province of the government. If the Broadcasting Corporation was exercising functions required and created for the purpose of government, it is difficult to see why a licence was required to be issued to it. Again, it is difficult to understand why in the event of an emergency powers should be given to the Postmaster-General to direct that the broadcasting stations of the Corporation should be deemed to be in possession of Her Majesty if it be the fact that such stations are already used for purposes of exercising functions required and created for purposes of the Government.

39. A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit. (See Halsbury's Laws of England 3rd Ed. Vol. 30 paragraph 1317 at p. 682).

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40. The Oil-fields (Regulation and Development) Act, 1948 defines "oilfield" as any area where any operation for the purpose of obtaining natural gas and petroleum, crude oil, refined oil, partially refined oil and any of the products of petroleum in a liquid or solid state, is to be or is being carried on. S. 4 of the said 1948 Act states that no mining lease shall be granted after the commencement of the Act otherwise than in accordance with the rules made under the Act. Section 5 of the said 1948 Act confers power on the Central Government to make rules for regulating grant of mining leases or prohibiting grant of leases. Section 6 of the said 1948 Act confers power on the Central Government

to make rules for the conservation and development of mineral oils. Mining gas includes natural gas and petroleum. Section 9 of the said 1948 Act states that any rule made under any of the provisions of the Act may provide that any contravention thereof shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both. The Petroleum Concession Rules, 1949 say that the Central Government grants approval for searching, drilling and producing petroleum and licences for exploring and prospecting. The Oil and Natural Gas Commission is given merely the duty to perform the leases.

41. The 1959 Act speaks in Section 14 of the functions of the Commission and in Section 15 of the powers of the Commission. The functions of the Commission are to plan, promote, organise and implement programmes for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by it and to perform such functions as the Central Government may, from time to time, assign to the Commission. The powers, of the Commission are such as may be necessary any expedient for the purpose of carrying out the functions under the Act. The Government acquires land for the Commission. The acquisition is for public purpose. The Commission extracts petroleum from the land. Entry No. 53 in List I of the Seventh Schedule speaks of regulation and development of oilfields and mineral oil resources: petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable. Entry No. 54 in list I speaks of regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest .

42. Section 23 of the 1959 Act says that the Oil and Natural Gas Commission shall furnish to the Central Government returns and statements and particulars in regard to proposed or existing programme for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by the Commission as the Central Government may require. Section 24 of the 1959 Act speaks of compulsory acquisition of land by the Commission. Section 25 of the 1959 Act confers power on any employee of the Commission authorised by it to enter upon any land or premises and there do such things as may be reasonably necessary for the purpose of lawfully carrying out any of its works or to make survey, examination or investigation preliminary or incidental to the exercise of powers or the performance of functions by the Commission under the Act. The employees of the Commission are deemed by Section 27 of the 1959 Act to be public servants under Section 21 of the Indian Penal Code.

43. The Oil and Natural Gas Commission Act, 1959 is an Act to provide for the establishment of a Commission for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by it and for matters connected therewith. Article 298 states that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts. Under Article 73 subject to the provisions of

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the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws; and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. The Union is competent to carry on trade and business in mines and mineral resources. The power of the Union is

co-extensive with the legislative power of the Parliament. The Oil and Natural Gas Commission is established for the development of petroleum resources and the production and sale of petroleum and petroleum products. The exploitation of the resources is by the Union through the agency of the statutory Commission. The members of the Commission are appointed by the Central Government. If they want to resign, resignation has to be sent to the Central Government. Termination of appointment of members is by the Central Government. The powers and functions of the Commission are those assigned by the statute and such functions as the Central Government may assign. No industry which will use any of the gases produced by the Commission as a raw material shall be set up by the Commission without the previous approval of the Central Government. The capital of the Commission is what has already been incurred by the Central Government as non-recurring expenditure in connection with the existing organisation. The Central Government may also provide to the Commission any further capital which may be required by the Commission for carrying on its business. The Commission may, with the previous approval of the Central Government borrow money. The budget is to be in such form as the Central Government may prescribe. The Commission may not re-appropriate without the previous approval of the Central Government. The reports, accounts are to be audited by the Comptroller and Auditor-General of India and these are not only to be forwarded to the Central Government but are also to be laid before the Parliament. The audit report is also to be placed before the Parliament. Any land required by the Commission is to be acquired under the Land Acquisition Act as if it were required by a company. The Commission is empowered to enter upon any land or premises. The dissolution of the Commission is by the Central Government

44. All these provisions indicate at each stage that the creation, composition of membership, the functions and powers, the financial powers, the audit of accounts, the returns, the capital, the borrowing powers, the dissolution of the Commission and acquisition of land for the purpose of the company and the powers of entry are all authority and agency of the Central Government.

45. The Life Insurance Act is an Act to provide for the nationalisation of life insurance business in India by transferring all such business to the Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. On the appointed day viz, 1 July, 1956, all assets and liabilities appertaining to the controlled business of all insurers became transferred to and vested in the Corporation. The service of existing employees of insurers was transferred to the Corporation. It became the duty of every person in possession, custody or control of property appertaining to the controlled business of an insurer to deliver the same to the Corporation forthwith. The Corporation was empowered to reduce the amounts of insurance under contracts of life insurance in such manner and subject to such conditions as it thought fit. In the discharge of functions under the Act, the Corporation is guided by directions in matters of policy involving public interest as the Central Government may give to us. If any question arises whether a direction related to a matter or policy involving public interest, the decision of the Central Government shall be final.

46. The Corporation is to submit to the Central Government an account of activities during the financial year. The Corporation has the exclusive privilege of carrying on life insurance business in India. On and from the appointed day, none but the Corporation can carry on life insurance

business in India. The sums assured by policies issued by the Corporation including bonuses shall be guaranteed as to payment in cash by the Central Government. No suit, prosecution or other legal proceedings shall lie against any member or employee of the Corporation for anything which is in good faith done or intended to be done under the Act.

47. The provisions of the Life Insurance Corporation Act amply establish that the Corporation has the exclusive privilege of carrying on life insurance business. The policies are guaranteed by the Central Government. If profits accrue from any business other than life insurance business then after making provision for reserves and other matters, the balance of profit shall be paid to the Central Government. The report of the activities of the Corporation is to be submitted to the Central Government.

48. The original capital of the Corporation is five crores of rupees provided by the Central Government. The Central Government may reduce the capital of the Corporation. The Corporation may ask for relief in respect of certain transactions of the insurer whose controlled business has been transferred to the Corporation. The relief is granted by the Tribunal. The Tribunal is constituted by the Central Government. The Central office of the Corporation shall be at such place as the Central Government may specify. In the discharge of functions under the Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may direct. If any question arises relating to a matter of policy involving public interest, the decision of the Central Government shall be final. The accounts of the Corporation shall be audited by auditors who will be appointed with the previous approval of the Central Government. The auditors shall submit the report to the Corporation and shall also forward a copy of the report to the Central Government.

49. If as a result of any investigation undertaken by the Corporation any surplus emerges, ninety five per cent of such surplus or such higher percentage thereof as the Central Government may approve shall be allocated to or reserved for the life insurance policy holders of the Corporation and after meeting the liabilities of the Corporation the remainder shall be paid to the Central Government or if that Government so directs be utilised for such purposes and in such manner as that Government may determine. If profits accrue after making provision for reserves and other matters, the balance shall be paid to the Central Government. The Central Government shall cause the report of the auditors, the report of the actuaries and the report giving an account of the activities of the Corporation to be laid before the Parliament. The provisions of the Companies Act do not apply to the Corporation with regard to winding up. The Corporation cannot be placed in liquidation except by an order of the Central Government .

50. The structure of the Life Insurance Corporation indicates that the Corporation is an agency of the Government carrying on the exclusive business of life insurance. Each and every provision shows in no uncertain terms that the voice is that of the Central Government and the hands, are also of the Central Government.

51. The Industrial Finance Corporation is a body corporate. The authorised capital of the Corporation shall be ten crores of rupees divided into twenty thousand fully paid up shares of five thousand rupees each. Ten thousand shares of the total value of five crores of rupees shall be issued in the first instance. The remaining shares may be issued with the sanction of the Central Government. Of

the capital issued in the first instance, the Central Government and the Reserve Bank of India shall each subscribe for two thousand shares. Scheduled banks may subscribe for two thousand five hundred shares. Insurance companies, investment trusts and other like financial institutions for two thousand five hundred shares and co-operative banks for one thousand shares of the Corporation. It is significant that ordinary citizens cannot be shareholders. All shares of the Corporation held by the Central Government and the Reserve Bank of India shall stand transferred to and

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vest in the Development Bank. As compensation therefor the Development Bank shall pay to the Central Government and to the Reserve Bank respectively the face value of the shares held by that Government and by that Bank. The shares of the Corporation shall be guaranteed by the Central Government as to the re-payment of the principal and the payment of the annual dividend at such minimum rate as may be fixed by the Central Government by notification. The Development Bank means the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964.

52. The Chairman of the Corporation shall be appointed by the Central Government. Four Directors are nominated by the Development Bank; two directors are nominated by the Central Government; two directors are elected by Scheduled Banks; two directors are elected by shareholders of the Corporation other than the Development Bank, Scheduled Banks and the co-operative banks; two directors are elected by co-operative banks. The Central Government may remove the Chairman.

53. Where any industrial concern which is under a liability to the Corporation makes any default in repayment or otherwise fails to comply with the terms of the agreement with the Corporation, the Corporation shall have the right to take over the management or possession or both of the concern as well as the right to transfer by way of lease or sale and realise the property, pledged, mortgaged, hypothecated or assigned, to the Corporation.

54. The Corporation shall furnish to the Central Government statement of assets and liabilities at the close of the year together with profit and loss account and a report of the working of the Corporation and the report shall be published in the Official Gazette and shall be laid before Parliament. No provision of law relating to the winding up of companies or corporations shall apply to the Corporation. The Corporation shall not be placed in liquidation save by order of the Central Government.

55. The superintendence and the affairs of the Corporation shall be entrusted to a Board. In the discharge of functions, the Board shall be guided by the Development Bank. If any dispute arises between the Development Bank and the Board the dispute shall be referred to the Central Government whose decision shall be final. The Central Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up.

56. The Corporation may invest its funds in the securities of the Central Government or of any State Government and may with the approval of the Central Government contribute to the initial capital of the Unit Trust of India. The Corporation may also subscribe to or purchase the shares of any financial institution which the Central Government in consultation with the Development Bank may

notify in this behalf. The Corporation may issue and sell bonds and debentures. Bonds and debentures of the Corporation shall be guaranteed by the Central Government as to the re-payment of the principal and the payment of interest.

57. The Central Government may issue directions to auditors requiring them to report to it upon the adequacy of measures taken by the Corporation for the protection of its shareholders and creditors. The Central Government may appoint the Comptroller and Auditor General of India to examine and report upon the accounts of the Corporation and expenditure. Every audit report shall be forwarded to the Central Government and the Government shall cause the same to be laid before both Houses of Parliament.

58. The Central Government may decide to acquire the shares held by the shareholders other than the Development Bank. The shareholders shall be paid for the shares so acquired an amount equal to the paid up value of the shares together with premium calculated at the rate of one percent of the paid-up value for every year from the date of issue to the date of acquisition subject to a maximum of ten per cent. After the acquisition of the shares, the Central Government shall transfer the shares to

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the Development Bank, that Bank paying an amount equal to the amount paid by the Central Government for such acquisition. After such acquisition, the Central Government may direct that the entire undertaking of the Corporation shall stand transferred to and vest in the Development Bank.

59. These provisions of the Industrial Finance Corporation Act show that the Corporation is in effect managed and controlled by the Central Government.

60. The Oil and Natural Gas Commission is owned by the Government. It is a statutory body and not a company. The Commission has the exclusive privilege of extracting petroleum. The management is by the Government. It can be dissolved only by the Government.

61. The Life Insurance Corporation is owned by the Government. The Life Insurance business is nationalised and vested in the Corporation. No other insurer can carry on life insurance business. The management is by the Government . The dissolution can be only by the Government.

62. The Industrial Finance Corporation is under the complete control and management of the Central Government. Citizens cannot be shareholders. Certain specified institutions like Scheduled Banks, Insurance Companies, Investment Trusts and Co-operative Banks may apply for the shares. The Central Government may acquire shares held by shareholders other than the Development Bank. After such acquisition, the Government may direct that the entire undertaking of the Corporation shall be vested in the Development . Bank. The Corporation cannot be dissolved except by the Government.

63. In the background of the provisions of the three Acts under consideration, the question arises as to whether these corporations can be described to be authorities within the meaning of Article 12 of the Constitution. In the Rajasthan Electricity Board case, (1967) 3 SCR 377 = (AIR 1967 SC 1857) it was said that the power to give directions, the disobedience of which must be punishable as a criminal offence would furnish one of the reasons for characterising the body as an authority within

the meaning of Article 12. The power to make rules or regulations and to administer or enforce them would be one of the elements of authorities contemplated in Article 12. Authorities envisaged in Article 12 are described as instrumentalities of State action. On behalf of the State it was contended that the Oil and Natural Gas Commission as well as Industrial Finance Corporation was not granted immunity from taxation and therefore the liability to be taxed would indicate that the Corporation was not a State authority. Reference is made to Article 289 which speaks of exemption of property and income of a State from Union taxation. The liability to taxation will not detract from the Corporation being an authority within the meaning of Art. 12. Article 289 empowers Union to impose tax in respect of trade or business carried on by or on behalf of a State.

64. The Oil and Natural Gas Commission Act confers power of entry on employees of the Commission upon any land or premises for the purpose of lawfully carrying out works by the Commission. The members and employees of the Commission are public servants within the meaning of Section 21 of the Indian Penal Code. The Commission enjoys protection of action taken under the Act.

65. The Life Insurance Act provides that if any person lawfully withholds or fails to deliver to the Corporation any property which has been transferred to and vested in the Corporation or wilfully applies them to purposes other than those expressed or authorised by the Act, he shall, on the complaint of the Corporation be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both. The Corporation also enjoys protection of action taken under the Act.

66. The Industrial Finance corporation Act states that whoever in any bill of lading, warehouse receipt or other instrument given to the Corporation whereby security is given to the Corporation for accommodation

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granted by it wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both. Further whoever without the consent in writing of the Corporation uses the name of the Corporation in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. The Corporation enjoys protection of action taken under the Act. A company incorporated under the Indian Companies Act does not enjoy these privileges.

67. For the foregoing reasons, we hold that rules and regulations framed by the Oil and Natural Gas Commission, Life insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. By way of abundant caution we state that these employees are not servants of the Union or the State. These statutory bodies are authorities" within the meaning of Article 12 of the Constitution.

68. In Civil Appeal No. 2137 of 1972, the declaration granted by the High Court that the order removing Bhagatram Sardarsingh Raghuvansi from service is null and void and that he continues in service is upheld. The writ of mandamus issued by the High Court is also upheld.

69. In Civil Appeal No. 1655 of 1973, the writ of mandamus granted by the High Court is upheld.

70. In Civil Appeal No. 1879 of 1972, our conclusion is that the Corporation is an authority within the meaning of Article 12 of the Constitution for the reasons given in this judgment. The conclusion of the High Court that the regulations have not the force of law is set aside. The conclusion of the High Court that the Corporation should not be permitted to enforce the regulations mentioned in clauses (1) and (4) of Regulation 25 is upheld.

71. In Civil Appeal No. 115 of 1974, the judgment of the High Court is set aside. The Finance Corporation is an authority within the meaning of Article 12. The regulations of the Corporation have the force of law. The conclusion of the High Court that the Association is not entitled to raise a plea of discrimination on the basis of Article 16 is set aside.

72. The appeals are disposed of accordingly.

73. The parties will pay and bear their own costs in all these appeals.

74. MATHEW, J The question whether a public corporation of the nature of Oil and Natural Gas Commission, Life Insurance Corporation or Industrial Finance Corporation is a 'state' within the meaning of Art. 12 of the Constitution is one of far reaching importance.

75. The, relevant provisions of the Oil and Natural Gas Commission Act, 1939, have been analysed in the judgment of my Lord the Chief Justice and I do not think it necessary to set them out here.

76. In (1967) 3 SCR 377 = (AIR 1967 SC 1857) this Court had occasion to consider the question whether the Rajasthan Electricity Board was an authority within the meaning of the expression "other authorities" in Article 12 of the Constitution. Bhargava, J. delivering the judgment for the majority pointed out that the expression "other authorities" in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned judge also said that if any body of persons has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that that authority is 'state'. Justice Shah who delivered a separate judgment agreeing with the conclusion reached by the majority preferred to adopt a slightly different meaning to the words "other authorities". He said that authorities, constitutional or statutory, would fall within the expression 'state' as defined in Article 12 only if they are invested with sovereign

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power of the State, namely, the power to make rules or regulations which have the force of law.

77. The test propounded by the majority is satisfied so far as the Oil and Natural Gas Commission (hereinafter referred to as the Commission) is concerned as Section 25 of the Oil and Natural Gas Commission Act (hereinafter referred to as 'the Act') provides for issuing binding directions to owners of land and premises not to prevent employees of the Commission from entering upon their

property if the Commission so directs. In other words, as Section 25 authorises the Commission to issue binding directions to third parties not to prevent the employees of the Commission from entering into their land and as disobedience of such directions is punishable under the relevant provision of the Indian Penal Code since those employees are deemed to be public servants under Section 21 of the Indian Penal Code by virtue of Section 27 of the Act, the Commission is an 'authority' within the meaning of the expression "other authorities" in Article 12.

78. Though this would be sufficient to make the Commission a 'state' according to the decision of this Court in the Rajasthan Electricity Board case. (1967)3 SCR 377 = (AIR 1967 SC 1857) (supra), there is a larger question which has a direct bearing so far as the other two Corporations are concerned viz. whether, despite the fact that there are no provisions for issuing binding directions to third parties the disobedience of which would entail penal consequence, the corporations set up under statutes to carry on business of public importance or which is fundamental to the life of the people can be considered as 'state' within the meaning of Art. 12 That Article reads:

"In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." It is relevant to note that the Article does not define the word 'state'. It only provides that 'state' includes the authorities specified therein. The question whether a corporation set up under a state to carry on a business of public importance is a 'state' despite the fact that it has no power to issue binding directions has to be decided on other considerations.

79. One of the greatest sources of our strength in constitutional law is that we adjudge only concrete cases and do not pronounce principles in the abstract. But there comes a moment when the process of empiric adjudication calls for more rational and realistic disposition than that the immediate case is not different from preceding cases.

80. The concept of state has undergone drastic changes in recent years. Today state cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation.

"If we clearly grasp the character of the state as a social agent, understanding it rationally as a form of service and not mystically as an ultimate power, we shall differ only in respect of the limits of its ability to render service." (see Mac Iver, "The Modern-State", 183).

81. To some people state is essentially a class-structure 'an organization of one class dominating over the other classes'; others regard it as an organisation that transcends all classes and stands for the whole community. They regard it as a power system. Some view it entirely as a legal structure, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community 'organized for action under legal rules'. Some regard it as no more than a mutual insurance society, others as the very texture of all our life. Some class the state as a great 'corporation' and others consider it as indistinguishable from society itself.*

* see Mac Iver, "The Modern-State", pp. 3-4

82. Part IV of the Constitution gives a picture of the services

which the state is expected to undertake and render for the welfare of the people. Article 298 provides that the executive power of the Union and State extends to the carrying on of any business or trade. As I said, the question for consideration is whether a public corporation set up under a special statute to carry on a business or service which Parliament thinks necessary to be carried on in the interest of the nation is an agency or instrumentality of the State and would be subject to the limitations expressed in Article 13 (2) of the Constitution. A state is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the state acting through a corporation and making it an agency or instrumentality of the State.

83. The chartered corporations of the 17th, 18th and 19th centuries were expected, perhaps required, to perform stated duties to the community like running a ferry, founding a colony or establishing East Indian trade. Performance of these functions and securing whatever revenue the enterprise made to the Crown were the primary reasons why a charter was granted. Corporations in early English Law were in fact, and in legal cognizance, a device by which the political state got something done. They were far more like the bodies corporate we call 'public authorities' today. Few in the 17th or 18th century would have disputed that such a corporation was an agency of the state.**

** see generally "The Modern Corporation and Private Property", Berle and Means, pp. 119-128.

84. The Supreme Court of the United States in *McCullough v. Maryland*. (1819) 4 Wheat 316 held that the Congress has power to charter corporation as incidental to or in aid of governmental functions. So far as federal corporations are concerned, they are, by hypothesis, agencies of government. With this premise it would follow that action of a federally chartered corporation would be governed by the constitutional limitation imposed on an agency of the Federal Government.*

* see Adolf A Berle, "Constitutional Limitations on Corporate Activity - Protection of Personal Rights from Invasion through Economic Power", 100 Univ. of Pennsylvania Law Rev. 933.

85. The tasks of government multiplied with the advent of the welfare state and consequently, the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character. At the same time. 'bureaucracy' came under a cloud. The distrust of government by civil service, justified or not, was a powerful factor in the development of a policy of public administration through separate corporations which would operate largely according to business principles and be separately accountable.

86. The public corporation, therefore, became a third arm of the Government. In Great Britain, the conduct of basic industries through giant corporations is now a permanent feature of public life.

87. A public corporation is a legal entity established normally by Parliament and always under legal authority, usually in the form of a special statute, charged with the duty of carrying out specified government functions in the national interest, those functions being confined to a comparatively restricted field and subjected to control by the executive, while the corporation remains juristically an independent entity not directly responsible to Parliament.* A public corporation is not generally a

multipurpose authority but a functional organisation created for a specific purpose. It has generally no shares or shareholders. Its responsibility generally is to Government. Its administration is in the hands of a Board appointed by the competent Minister. The employees of public corporation are not civil servants. It is, in fact, likely that in due course.

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a special type of training for specialized form of public service will be developed and the status of the personnel of public corporation may more and more closely approximate to that of civil service without forming part of it. In so far as public corporations fulfil public tasks on behalf of government, they are public authorities and as such subject to control by government.

* see Garner: "Public Corporations in the United Kingdom" in "Government Enterprise" ed. W. Friedmann and J. F. Garner, p. 4.

88. In France, "An enterprise publique is an enterprise the whole or the majority of whose capital belongs to the State or other public agencies. By reason of its industrial or commercial activities it is basically subject to private law (and particularly to commercial law as are private enterprises), but, because of its public nature, it finds itself subjected to a certain degree of dependence on and control by public authority." *

* see "Government Enterprise", ed. W. Friedmann and J. F. Garner, pp. 107-108.

89. The motivation for the creation of public corporation naturally plays much larger part in under-developed and poor countries than in industrially advanced countries. This accounts for the emergence of public corporations and the present significance of public enterprise carried on by them. The Government of India resolution on industrial policy dated April 6, 1948 stated, among other things, that "management of state enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this". The Government of India Resolution on Industrial Policy dated April 30, 1956 stated. **

** see "Government in Business", S. S. Khera p. 368 and p 373.

"Accordingly, the State will progressively assume a predominant and direct responsibility for setting up new industrial undertakings and for developing transport facilities. It will also undertake State trading on an increasing scale."

90. The Constitution was framed on the theory that limitation should exist on the exercise of power by the State. The assumption was that the State alone was competent to wield power. But the essential problem of liberty and equality is one of freedom from arbitrary restriction and discrimination whenever and however imposed. The Constitution, therefore should wherever possible, be so construed as to apply to arbitrary application of power against individuals by centres of power. The emerging principal appears to be that a public corporation being a creation of the State is subject to the constitutional limitation as the State itself. The preconditions of this are two, namely, that the corporation is created by State, and, the existence of power in the corporation to invade the constitutional right of individual.

91. The advocates of pluralism like Laski and Dr. Figgis pleaded for recognition of social groups within the state in mitigation of the legal and ideological deification of the state. Today probably the giant corporations, the labour unions, trade associations and other powerful organisations have taken the substance of sovereignty from the state. We are witnessing another dialectic process in history namely, that the sovereign state having taken over all effective legal and political power, from groups surrenders its power to the new massive social groups. * The growing power of the industrial giants, of the labour unions and of certain other organized groups compels a reassessment of the relation between group power and the modern state on the one hand and the freedom of the individual on the other. The corporate organisations of business and labour have long ceased to be private phenomena. That they have a direct and decisive impact on the social, economic and political life of the nation is no longer a matter of argument. It is an undeniable fact of daily experience. The challenge to the contemporary lawyer is to translate the social transformation of those organisations from private associations to public organisms into legal terms. In attempting to do so, we have to recognize that both business and labour currently exercise vast powers. First, they have power over the millions of men and

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women whose lives they largely control as employees or as members. Second, they exercise power more indirectly, though not less powerfully, over the unorganized citizens whose lives they largely control through standardized terms of contract, through price policy, through the tempo of production and the terms and conditions of labour. Last, they exercise control over the organized community, represented by the organs of State, in a multitude of ways; direct lobby pressures, control over election and policies of the elected representatives of the peoples and far reaching control over the Mass Media of communication. In this sense government or 'law-making' by private groups is today an irreversible fact.**

* see W.Friedmann, "Law in a Changing Society", p. 298.

** see "Corporate Power. Government by Private Groups and the Law", (57 Columbia Law Rev. 156, at-156. 176-177).

92. Generally speaking, large corporations have power and this power does not merely come from the statutes creating them. They acquire power because they produce goods or services upon which the community comes to rely. The methods by which these corporations produce and the distribution made in the course of their production by way of wages, dividends and interest, as also the profits withheld and used for further capital progress and the manner in which, and the conditions under which they employ their workmen and staff are vital both to the lives of many people and to the continued supply line of the country. Certain imperatives follow from this. Both big business and big labour unions exercise much quasi public authority. The problem posed by the big corporation is the protection of the individual rights of the employees. Suggestions are being made that the corporate organisations of big business and labour are no longer private phenomena; that they are public organisms and that constitutional and common law restrictions imposed upon State agencies must be imposed upon them.

93. The governing power wherever located must be subject to the fundamental constitutional limitations. The need to subject the power centers to the control of constitution requires an

expansion of the concept of State action. The historical trend in America of judicial decisions has been that of bringing more and more activity within the reach of the limitations of the Constitution. "The next step would be to draw private governments into the tent of state action This is not a particularly startling proposition, for a number of recent cases have shown that the concept of private action must yield to a conception of state action where public functions are being performed"***

** see Arthur S. Miller: "The Constitutional Law of the 'Security State' " 10 Stanford Law Rev. 620, at 664.

94. In *Marsh v. Alabama*, (1946) 326 US 501, a corporation owned a 'company town'. Marsh, a Jehovah's witness offered his pamphlets and preached his doctrine on one of the town corners. He was arrested for trespassing by one of the company guards, was fined five dollars and the case went all the way up to the Supreme Court. On straight property logic, Marsh, of course was trespassing; he was unwanted visitor on company's real estate. But, Court said, operation of a town is a public function. Although private in the property sense, it was public in the functional sense. The substance of the doctrine there laid down is that where a corporation is privately performing a 'public function' it is held to the constitutional standards regarding civil rights and equal protection of the laws that apply to the state itself. The Court held that administration of private property of such a town, though privately carried on, was, nevertheless in the nature of a public function, that the private rights of the corporation must therefore be exercised within constitutional limitations, and the conviction for trespass was reversed.

95. But how far can this expansion go? Except in very few cases, our Constitution does not through its own force, set any limitation upon private action. Article 13 (2) provides that no, State shall make any law which takes away or abridges the rights guaranteed by Part III. It is

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the State action of a particular character that is prohibited. Individual invasion of individual right is not, generally speaking, covered by Article 13 (2). In other words, it is against State action that fundamental rights are guaranteed. Wrongful individual acts unsupported by State authority in the shape of laws, customs, or judicial or executive proceeding are not prohibited. Articles 17, 23 and 24 postulate that fundamental rights can be violated by private individuals and that the remedy under Article 32 may be available against them. But by and large, unless an act is sanctioned in some way by the State, the action would not be State action. In other words, until some law is passed or some action is taken through officers or agents of the State, there is no action by the State. In the *Civil Rights case*, (1881) 109 US 3 Bradley. J. speaking for the majority, took this view of the 14th Amendment. That Amendment provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

On the other hand, Justice Harlan tried to justify the imposition of civil liability for racial discrimination, effected not only by the normal officers of the State, but also by private individuals. He perceived State action in rules and practices of hotels, inns, taverns, rail roads and places of

amusement. He said that inn keepers are exercising a quasi public employment and that law gives them special privileges and they are charged with certain duties and responsibilities to the public. As to public conveyances, he read the law of common carriers to require the performance of public duties, and that no matter who is the agent or what is the agency, the function to be performed is that of State. The investiture of rail road with power of eminent domain made the function of the rail road corporation a public function. I think the later decisions of courts in the U.S.A. follow the lead given by Justice Harlan in his dissenting judgment. Several tests have been propounded to find out whether an action is private or State action. These decisions do not rest on the basis that the entity or organization must wield authority in the sense it must have power to issue commands in the Austinian sense, or that it must have the sovereign power to pass laws or regulations having the force of law.

96. Does any amount of state help, however inconsequential, make an act something more than an individual Act? Suppose, a privately owned and managed operation receives direct financial aid from the State, is an act of such an agency an act of State? It would be difficult to give a categorical answer to this question. Any operation or purpose of value to the public may be encouraged by appropriation of public money and the resulting publicly supported operation can be characterized as a state operation. But such a rule would seem to go to the extreme. There seems to be no formula which would provide the correct division of cases of this type into neat categories of State action and private action. Some clue however, to the considerations which might impel the court in one direction or the other may be obtained from an examination of the cases in this area. The decisions of the State courts in U.S.A. seem to establish that a private agency, if supported by public money for its operation would be 'state'. But in all these cases, it has been found that there was an element of control exercised by the State. Therefore, it may be stated generally that State financial aid alone does not render the institution receiving such aid a state agency. Financial aid plus some additional factor might lead to a different conclusion. A mere finding of state control also is not determinative of the question, since a state has considerable measure of control under its police power over all types of business operations. It is not possible to assume that the panoply of law and authority of a state under which people carry on ordinary business, or their private affairs or own property, each enjoying equality in terms of legal capacity would be extraordinary

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assistance. A finding of state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action.

97. Another factor which might be considered whether, the operation is an important public function, The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of state financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion,

98. The State may aid a private operation in various ways other than by direct financial assistance, It may give the organization the power of eminent domain, it may grant tax exemptions, or it may give

it a monopolistic status for certain purposes, All these are relevant in making an assessment whether the operation is private or savours of State action.*

* See generally "the meaning of state Action", Lx columbia Law Rev .1083

99. An important case on the subject is *Kerr v. Enoch Pratt Free Library* (1945) 149 F: 2d 212 (4th cir.) cert denied, 326 U.S. 721. The library system in question was established by private donation in 1882, but by 1944, 99 per cent of the system's budget was supplied by the city; title to the library property was held by the city; employees were paid by the city pay-roll officer; and a high degree of budget control was exercised or available to the city government. On these facts the Court of Appeals required the trustees managing the system to abandon a discriminatory admissions policy for its library training courses.**

* See LX Columbia Law Review 1083, at 1103.

100. *Dorsey v. Stuyvesant Town Corporation*. 299 NY 512 related to the problem raised by discriminatory action by a private agency receiving State financial aid. Pursuant to New York's redevelopment laws, the Metropolitan Life Insurance Company organized a redevelopment corporation to participate in a plan to construct housing. By an investment of some \$ 90,000.000, the company constructed a complex of apartments capable, of housing 25,000 people. The power of eminent domain was used to acquire the necessary land and partial tax exemption was granted for the completed project. As a part of the co-operative effort by the city and the private company the plans for the project were subject to approval of the city and the company's profits, dividends, and power to dispose of the property were subjected to regulation by State law. When prospective Negro tenants were rejected by the company, they sued to enjoin discrimination as a violation of the Fourteenth Amendment. The majority of the New York Court of Appeals found no exertion of State power directly in aid of discrimination and decided that the private company was not engaged in a governmental function. Fuld, J, dissented. He said that even the conduct of private individuals would offend against the equal protection clause if the conduct appears in an activity of public importance and if the State has accorded to the activity, either the panoply of its authority or the weight of its power, interest and support, (See the Note in 35 Cornell Law Quarterly 399).

101. In America, corporations or associations, private in character, but dealing with public rights, have already been held subject to constitutional standards. Political parties, for example, even though they are not statutory organisations, and are in form private clubs, are within this category. So also are labour unions on which statutes confer the right of collective bargaining. Thus in *Steele v. Louisville and N.R.B. Co.* (1944) 323 US 192 at p. 198 it was observed:

"If.. ,the (Railway Labour) Act confers this power on the bargaining representative of a craft. without any commensurate statutory duty towards its members, constitutional questions arise. For the representative is clothed with power not unlike that of, a legislature which is subject to

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constitutional limitations on its power to deny, restrict, destroy, discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights."

102. Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed government agencies, (See the decisions in (1926) 273 U.S. 536 and *Nixon v. Condon*, (1931) 286 US 73). Activities which are too fundamental to the society are by definition too important not to be considered government function. This demands the delineation of a theory which requires government to provide all persons with all fundamentals of life and the determinations of aspects which are fundamental. The state today has an affirmative duty of seeing that all essentials of life are made available to all persons. The task of the State today is to make possible the achievement of a Good life both by removing obstacles in the path of such achievements and in assisting individual in realizing his ideal of self-perfection. Assuming that indispensable functions are government functions, the problem remains of defining the line between fundamentals and non-fundamentals. The analogy of the doctrine of "businesses affected with a public interest" immediately comes to mind. The difficulty here is well stated by Justice Holmes in *Tyson and Brother v. Banton*. (1926) 273 US 418 at p.447 dealing with the constitutionality of a New York statute which limited the fees charged by theatre ticket brokers:

"But if we are to yield to fashionable conventions, it seems to me that theatres are as much devoted to public use as anything well can be., (T)o many people the superfluous is the necessary, and it seems to me that government does not go beyond its sphere in attempting to make life livable for them."

103. The difficulty of separating vital government functions from non-government functions has created further difficulties. Is the distinction between governmental and non-governmental functions which plagued the courts a rational one? The contrast is between governmental activities which are private and private activities which are governmental. Without the adoption of a radical laissez faire philosophy and the definition of State functions as they were current in the days of Herbert Spencer it is impossible to sort out proper from improper functions. Besides the so-called traditional functions, the modern State operates a multitude of public enterprises. Mr. Justice Holmes said, the Constitution does not enact Herbert Spencer's social statics. This applies equally to the definition of State function for legal purposes.

104. In *New York v. United States*, (1945) 326 US 572 = (90 Law ed. 326), the question was, whether the State of New York was liable to the federal tax on mineral waters from state-owned and state-operated Saratoga Springs. The judgments of both the majority and the minority agree on the uselessness of the test laid down in *Ohio v. Helvering*. (1933) 292 U.S. 360 at p. 366 that liability to taxation depended upon the distinction between state as government and state as trader. Frankfurter, J, said:

"When this Court came to sustain the federal taxing power upon a transportation system operated by a State, it did so in ways familiar in developing the law from precedent to precedent. It edged away from reliance on a sharp distinction between ,the 'governmental' and the 'trading' activities of a State, by denying immunity from federal taxation to a State when it "is undertaking a business enterprise of a sort that is normally within the reach of the federal taxing power and is distinct from the usual governmental functions that are immune from federal taxation in order to safeguard the necessary independence of the State". *Helvering v. Powers*, (1934) 293 U.S. 214 at 227. But this likewise does not furnish a satisfactory guide for dealing with such a practical problem as the constitutional power of the United States over State activities. To rest the federal taxing power on

what is 'normally' conducted by private enterprise in contradiction to the 'usual' governmental functions is too shifting a basis for determining constitutional power and too

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entangled in expediency to serve as a dependable legal criterion. The essential nature of the problem cannot be hidden by an attempt to separate manifestations of indivisible governmental powers."

105. Douglas, J, said (1945) 326 US 572 at p. 591:

"A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit. Cf. *Helvering v. Gerhardt*, (1937) 304 US 405, 426, 427. A State may deem it as essential to its economy that it own and operate a rail road, a mill, or an irrigation system as it does to own and operate bridges, street lights, or a sewage disposal plant. What might have been viewed in an earlier day as an improvident or even dangerous extension of State activities may today be deemed indispensable. But as Mr. Justice White said in his dissent in *South Carolina v. United States*, ((1905) 199 US 437) any activity in which a State engages within the limits of its police power is a legitimate governmental activity."

106. In *Pfizer v. Ministry of Health*, (1964) 1 Ch 614, at p. 641 (affirmed 1965 A. C. 512), Willmer L. J, in the Court of Appeal has recognized that in mid-Victorian times the treatment of patients in hospitals would have been regarded as 'something quite foreign to the functions of Government' but added that since then there had been a revolution in political thought, and a totally different conception prevails today as to what is and what is not within the functions of Government.'

107. It has taken English and American Courts many years to concede that the exercise of an industrial or commercial activity on behalf of the State does not deprive such activity of its governmental' character. But a great many anomalies in common law remain, in particular as regards to immunities and privileges of the Crown in such matters, immunity from the binding force of statute, debt priority, freedom from taxes and other public charges. The recent English cases appear, at long last, to move towards the abandonment of the totally antiquated notions of 'proper' functions of Government.

108. In the light of this discussion let us see whether the Life Insurance Corporation and the industrial Finance Corporation would come within the ambit of 'state'.

109. The relevant provisions of the Life Insurance Corporation Act have been very clearly analysed in , the judgment of my Lord the Chief Justice and it is unnecessary to repeat them. It is clear from those provisions that the Central Government has contributed the original capital of 'the Corporation, that part of the profit of the Corporation goes to that Government that the Central Government exercises control over the policy of the Corporation that the Corporation carries on a business having great public importance and that it enjoys a monopoly in the business. I would draw the same conclusions from the relevant provisions of the Industrial Finance Corporation Act which have also been referred to in the aforesaid judgment. In these circumstances, I think, these corporations are agencies or instrumentalities of the 'state' and are, therefore, 'state' within the meaning of Article J2. The fact that these corporations have independent personalities in the eye of

law does not mean that they are not subject to the control of Government or that they are not instrumentalities of the Government. These corporations are instrumentalities or agencies of the State for carrying on business which otherwise would have been run by the State departmentally. If the State had chosen to carry on these businesses through the medium of government departments, there would have been no question that actions of these departments would be 'State actions.' Why then should actions of these corporations be not State actions?

110. The Additional Solicitor General submitted that since these corporations have separate personalities, they cannot be regarded as agents or instrumentalities of the State and referred to the decision in *Andhra Pradesh State Road Transport Corporation v. Income Tax Officer*, (1964) 7 SCR 17 = (AIR 1964 SC 1486). The question in that case was whether the Road Transport

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Corporation constituted under the Road Transport Corporations Act, 1950, was carrying on business on behalf of the State of Andhra Pradesh and that the income of the Corporation was exempt from liability to pay income tax. This Court took the view that the Road Transport Corporation was a corporate body and has a separate personality and, therefore, the business carried on by it was its own business and the State Government had no beneficial interest in the income.

111. The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business? When it is seen from the provisions of that Act that on liquidation of the Corporation, its assets should be divided among the shareholders, namely, the Central and State governments and others, if any, the implication is clear that the benefit of the accumulated income would go to the Central and State governments. Nobody will deny that an agent has a legal personality different from that of the principal. The fact that the agent is subject to the direction of the principal does not mean that he has no legal personality of his own. Likewise, merely because a corporation has legal personality of its own, it does not follow that the corporation cannot be an agent or instrumentality of the state, if, it is subject to control of government in all important matters of policy. No doubt, there might be some distinction between the nature of control exercised by principal over agent and the control exercised by government over public corporation. That, I think is only a distinction in degree. The crux of the matter is that public corporation is a new type of institution which has sprung from the new social and economic functions of government and that it therefore does not neatly fit into old legal categories. Instead of forcing it into them, the latter should be adapted to the needs of changing times and conditions.

112. I do not think there is any basis for the apprehension expressed that by holding that these public corporations are 'state' within the meaning of Article 12, the employees of these corporations would become government servants. I also wish to make it clear that, I express no opinion on the question whether private corporations or other like organisations, though they exercise power over their employees which might violate their fundamental rights would be 'state' within the meaning of Article 12.

113. The second question for consideration is whether an order of removal or dismissal from service contrary to the regulations framed by these corporations in the exercise of power conferred in that

behalf would enable an employee to a declaration against them for continuance in service or would give rise only to a claim for damages.

114. This will depend upon the question whether the regulations framed by these corporations would have the force of law and even if they have not the force of law, whether the employment is public employment and, for that reason, the employee would obtain a status which would enable him to obtain the declaration.

115. The learned Chief Justice has dealt with the question in his Judgment whether the regulations framed by the corporations have the force of law and he has arrived at the conclusion that the regulations being framed under statutory provisions would have the force of law.

116. Even assuming that the regulations have no force of law, I think since the employment under these corporations is public employment, an employee would get a status which would enable him to obtain declaration for continuance in service if he was dismissed or discharged contrary to the regulations.

117. The original concept of employment was that of master and servant. It was therefore held that a Court will not specifically enforce a contract of employment. The law has adhered to the age-old rule that an employer may dismiss the employee at will. Certainly, an employee can

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never expect to be completely free to do what he likes to do. He must face the prospect of discharge for failing or refusing to do his work in accordance with his employer's directions. Such control by the employer over the employee is fundamental to the employment relationship. But there are innumerable facets of the employee's life that have little or no relevance to the employment relationship and over which the employer should not be allowed to exercise control. It is no doubt difficult to draw a line between reasonable demands of an employer and those which are unreasonable as having no relation to the employment itself. The rule that an employer can arbitrarily discharge an employee with or without regard to the actuating motive is a rule settled beyond doubt. But the rule became settled at a time when the words 'master' and 'servant' were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his pater familias. The over-tones of this ancient doctrine are discernible in the judicial opinion which rationalized the employer's absolute right to discharge the employee. Such a philosophy of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers. The conditions have now vastly changed and it is difficult to regard the contract of employment with large scale industries and government enterprises conducted by bodies which are created under special statutes as mere contract of personal service. Where large number of people are unemployed and it is extremely difficulty to find employment, an employee who is discharged from service might have to remain without means of subsistence for a considerably long time and damages in the shape of wages for a certain period may not be an adequate compensation to the employee for non-employment. In other words, damages would be a poor substitute for reinstatement. The traditional rule has survived because of the sustenance it received from the law of contracts. From the contractual principle of mutuality of obligation, it was reasoned that if the

employee can quit his job at will, then so too must the employer have the right to terminate the relationship for any or no reason. And there are a number of cases in which even contracts for permanent employment i.e. for indefinite terms, have been held unenforceable on the ground that they lack mutuality of obligation. But these cases demonstrate that mutuality is a high-sounding phrase of little use as an analytical tool and it would seem dear that mutuality of obligation is not an inexorable requirement and that lack of mutuality is simply as many courts have come to recognize, an imperfect way of referring to the real obstacle to enforcing any kind of contractual limitation on the employer's right of discharge. i.e. lack of consideration. If there is anything in contract law which seems likely to advance the present inquiry, it is the growing tendency to protect individuals from contracts of adhesion from over-reaching terms often found in standard forms of contract used by large commercial establishments. Judicial disfavour of contracts of adhesion has been said to reflect the assumed need to protect the weaker contracting party against the harshness of the common law and the abuses of freedom of contract. The same philosophy seems to have some vitality, that "the servant cannot complain, as he takes the employment on the terms which are offered to him" see Justice Holmes in *Masuliffe v. New Bedford*, 155 Mass. 216.

118. In *Malloch v. Aberdeen Corporation*, (1971) 1 WLR 1578, Lord Wilberforce, in speaking about the anomaly created by judicial decision in the area of contractual and statutory employments, has said:

"A comparative list of situations in which persons have been held entitled or not entitled to a hearing or to observation of rules of natural justice, according to the master and servant test, looks illogical and even bizarre. A specialist surgeon is denied

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protection which is given to a hospital doctor; a University professor, as a servant has been denied the right to be heard, a dock labourer and an undergraduate have been granted it; examples can be multiplied. One may accept that if there are relationships in which all requirements of the observance of rules of natural justice are excluded (and I do not wish to assume that this is inevitably so). these must be confined to what have been called "pure master and servant cases", which I take to mean cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection. If any of these elements exist, then, in my opinion, whatever the terminology used, and even though in some inter partes aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void." (at pp. 1595-1596, Emphasis added.)

119. I think that employment under public corporations of the nature under consideration here is public employment and therefore the employee should have the protection which appertains to public employment.

120. In *McClelland v. Northern Ireland Health Board*, (1957) 2 All ER 129 the House of Lords, by a majority, decided that the express term which provided for dismissal in case of misconduct and inefficiency was exhaustive of the grounds of dismissal and, therefore, no further terms as to notice could be implied Lord Evershed pointed out:

"Much may turn on the premise to a consideration of the meaning of the conditions whether in a contract of service made in the twentieth century with a statutory board such as the respondent board (whose established officers participate in the pension scheme contained in regulations promulgated by the Ministry of Health and Local Government of Northern Ireland), it is correct to regard the common law right of a master to determine his servant's engagement as of so well-established and paramount character that the contract should be interpreted as necessarily subject to that right (and to a corresponding right on the part of the servant) so that only the clearest express term will exclude it."

And he also pointed out that the position of the employer board and one of its servants is very different "The loss or damage to the board occasioned by the departure of one of its servants would, save in very exceptional circumstances, be negligible. To a servant, certainly a servant in the position of the appellant, the security of employment with the board for the period of working life is of immense value." This approach to public employment goes some way towards the reversal of the common law position. In public employment where there is an appointment to a permanent post, there should be presumption that the employee cannot be given notice and the servant can only be dismissed for misconduct or specified reasons, Lord Evershed in interpreting the word 'permanent' in that case said: "it seems to me of considerable importance, in interpreting its use in a contract of service, that such a contract cannot be specifically enforced." This is an orthodox statement of legal principle but it is nevertheless paradoxical to find it in a judgment which supported the majority view that a declaration should be 'granted. Declaration is not specific performance but it has the same effect in practice where a public authority is concerned which will invariably act in accordance with the law as declared, Declarations that notices of dismissal were invalid have also been granted in the school teacher cases. see *Sadler v. Sheffield Corporation*, (1924) 1Ch. 483; *Martin v. Eccles Corporation*, (1919) 1Ch. 387; and *Hanson v. Radcliffe U.D.C.*, (1922) 2 Ch. 490.

121. In (1922) 2 Ch. 490, Lord Sterndale M.R., said: "The power of the Court to make declarations when it is a question of determining the rights of two parties to a contract, is now almost unlimited or limited only "by the discretion of the court", "The discretion which should guide the

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court must be in tune with the modern conditions of life and should result in reversal of present-day attitude. If a job is regarded as analogous to property, it ought to be recognized that a man is entitled to a particular job just as the courts of Equity acknowledged his right to a particular piece of property. Where a public authority is concerned this can be implemented by a declaration. In the case of private employment English law has devised no suitable remedy. That this is possible is shown by the example of other countries.* The Court must, therefore, adopt the attitude that declaration is the normal remedy for a wrongful dismissal in case of public employees which will only be refused in exceptional circumstances. The remedy of declaration should be a ready-made instrument to provide reinstatement in public sector. Once it is accepted that a man's job is like his property of which he can be deprived of for specific reasons, this remedy becomes the primary one though it will need to be reinforced where private individuals are being sued. The law of master and servant has not kept pace with the modern conditions and the mandate of equality embodied in the Constitution. The law still attaches to the servant a status of inferiority and subjection to his master. Though fundamental reforms can only emanate from the legislature, the principles fashioned by

public law if applied to master-servant relationship can bring about a change in law to accord with the social conditions of the 20th century. **

* See Wedderburn : " The Worker and the Law ", p. 89 onwards

* See generally " Public Law Principles Applicable to dismissal from Employment " by G. Ganz, 30 Modern Law Rev. 288

122. That apart, the regulations framed by these corporations were intended to be binding upon them and were the bases on which the employments were made. As the employments were under corporations created by statutes for carrying on businesses of public importance, they were public employment. And even if the regulations have not got the force of law, I think the principle laid down by Justice Frankfurter in *Vitarelli v. Seaton*, (1959) 359 US 535 at pp. 546-547 should govern the situation. He said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. ., Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed, This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

123. I agree with the conclusions of my Lord the Chief Justice.

124. ALAGIRISWAMI, J : In his Judgment in Writ Petition No. 43 of 1972 my Lord the Chief Justice has quoted with approval the decisions of this Court in *Praga Tools Corpn, v. Imanuel* (1969 (3) SCR 773) = (AIR 1969 SC1306) *Heavy Engin. Mazdoor Union v, State of Bihar*, (1969 (3) SCR 995) = (AIR 1970 SC 82), and *S. L. Agarwal v. Hindustan Steel* (1970 (3) SCR 363) = (AIR 1970 SC 1150). I may also refer to the decision of this Court in *Hindustan Antibiotics v. Workmen*, (1967 (1) SCR 652) = (AIR 1967 SC 948). The last one was a Government undertaking incorporated under the Indian Companies Act. The entire equity capital of the company was held by the President of India and his nominees and the entire Board of Directors was nominated by him. Service conditions of the workmen and other matters were subject to the approval of the President of India. It was pointed out by the Constitution Bench of this Court that though the company was a limited one and therefore had a distinct corporate existence, it was in effect financed and controlled by the Central Government. The conduct of the business of the company was subject to the directives issued from time to time by the President of India and its accounts were audited by the auditors appointed by the Central Government on the advice of the Comptroller and Auditor General of India. The annual report of the working of the company and its affairs

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along with the Audit Report had to be placed before the Parliament. Dividends declared by the company entirely went to the coffers of the State, All the same this Court treated that company like any other company registered under the Indian Companies Act.

125 In *Gurushantappa v. Abdul Khaddus*, (1969) 3 SCR 425 = (AIR 1969 SC 744) the question whether an employee in a company owned by Government was holding an office of profit was considered. It was a private limited company registered under the name of Mysore Iron and Steel

Limited, Bhadravati. The shares of the company were held cent per cent by the Mysore Government. Under the Articles of Association of the company the first Directors of the company were Minister-in-Charge of the Industries Portfolio in the Mysore Government, the Secretaries to the Mysore Government in the Finance Department and in the Commerce and Industries Department, the Managing Director of the Mysore Iron and Steel Ltd., and the Chief Conservator of Forests of the Mysore Government. The Governor of Mysore was entitled to appoint all or a majority of the members of the Board of Directors so long as the Government of Mysore held not less than 51 per cent of the total paid up capital of the company or so long as the Governor continued to be interested in any fiduciary capacity. Thus the State Government had considerable control in appointment of Directors of the company as well as in the appointment of the Managing Director who was to be appointed by the Governor from amongst the Directors nominated by him. The Governor was also entitled to appoint from amongst the nominated Directors a Chairman and Vice-Chairman of the Board of Directors. Even the Secretary of the company had to be appointed by the Board of Directors after obtaining approval of the Governor, In respect of other employees of the company, recruitment and service conditions had to be in accordance with the rules which may be prescribed by the Government from time to time, This Court held that the employee was not holding an office of profit under the State Government.

126. In Praga Tools Corporation's case (1969) 3 SCR 773 = (AIR 1969 SC 1306) (supra) the company was incorporated under the Indian Companies Act. The Union Government and the Government of Andhra Pradesh between them held 56 per cent and 32 per cent of its shares respectively. The Union Government had the power to nominate the company's directors. This Court held that even so, being registered under the Companies Act and governed by the provisions of that Act, the company was a separate legal entity and could not be said to be either a Government corporation or an industry run by or under the authority of the Union Government.

127. In the Heavy Engineering case (1969) 3 SCR 995 = (AIR 1970 SC 82) (supra) the company was one incorporated under the Companies Act. Its entire share capital was contributed by the Central Government and all its shares were registered in the name of the President of India and certain officers of the Central Government. It was, therefore, a Government company. The Memorandum of Association and the Articles of Association of the company conferred large powers on the Central Government including the power to give directions as regards the functioning of the company. The wages and salaries of its employees were also determined in accordance with the said directions. The Directors of the company were appointed by the President. In its standing orders, the company was described as a Government undertaking. In dealing with the question whether the company could be said to be carrying on its business pursuant to the authority of the Central Government this Court observed:

"An incorporated company as is well known, has a separate existence and the law recognises it as a juristic person, separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date the persons subscribing to its memorandum of association and others joining it as members are regarded as a body incorporate or a corporation aggregate

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and the new person begins to function as an entity (cf. *Salomon v. Solomon and Co.*)-1897 AC 22. Its rights and obligations are different from those of its shareholders. Action taken against it does not directly affect its shareholders. The company in holding its property and carrying on its business is not the agent of its shareholders. An infringement of its rights does not give a cause of action to its shareholders. Consequently, it has been said that if a man trusts a corporation he trusts that legal persona and must look to its assets for payment; he can call upon the individual shareholders to contribute only if the Act or charter creating the corporation so provides. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess only a nominal interest in its property or hold it in trust for him. (cf. *Halsbury's Laws of England*, 3rd Ed. Vol. 9. p. 9). Such a company even possesses the nationality of the country under the laws of which it is incorporated, irrespective of the nationality of its members and does not cease to have that nationality even if in times of war it falls under enemy control (cf. *Janson v. Driefontein Consolidated Mines. Ltd.* 1902 AC 484 and *Kuenigl v. Donnersmarck*, (1955) 1 QB 515). The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the shareholders being as aforesaid, distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government. A notice to the President of India and the said officers of the Central Government, who hold between them all the shares of the company, would not be a notice to the company; nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the State as in *Graham v. Public Works Comms.*, (1901) 2 KB 781 where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation, acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government (see *State Trading Corporation of India Ltd. v. Commercial Tax Officer, Visakhapatnam*, (1964) 4 SCR 99 at p. 188. = (AIR 1963 SC 1811 at p. 1849) per Shah, J. and *Tamlin v. Hannaford*.

(1950) 1 KB 18 at pp. 25, 26. Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental

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and not commercial functions (cf. London County Territorial and Auxiliary Forces Association v. Nichols), (1948) 2 All ER 432.

128. In Hindustan Steel case (1970) 3 SCR 363 = (AIR 1970 SC 1150) (supra) it was argued before the Constitution Bench that since it was entirely financed by the Government and its management was directly the responsibility of the President the post was virtually under the Government of India. Hindustan Steel was a Government company and a private limited company. Its Articles of Association as also the Indian Companies Act rendered the ordinary company law inapplicable in certain respects and conferred unlimited powers of management on the President of India and his nominees. It was entirely owned by the Union of India. This Court held that the Hindustan Steel had its independent existence and by the law relating to corporations it was distinct even from its members, though the question for decision there in was whether Article 311 of the Constitution applied to the employee in question.

129. I shall now compare these cases with those relating to the Oil and Natural Gas Commission, the Life Insurance Corporation of India and the Industrial Finance Corporation with which these four appeals are concerned.

130. The Oil and Natural Gas Commission consists of the Chairman, and not less than two, and not more than eight other members appointed by the Central Government. The Central Government may, if it thinks fit, appoint one of the members as Vice Chairman of the Commission. The Commission may, for the purpose of performing its functions or exercising its powers, appoint such number of employees as it may consider necessary. The functions and the terms and conditions of service of such employees shall be such as may be provided by regulations made under the 1959 Act. The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the Act and the rules made thereunder, for enabling it to discharge its functions under the Act. The regulations provide inter alia for the terms and conditions of appointment and service and the scales of pay of employees of the Commission; the time and place of meetings of the Commission, the procedure to be followed in regard to the transaction of business at such meetings; the maintenance of minutes of meetings of the Commission and the transmission of copies thereof to the Central Government; the persons by whom, and the manner in which payments, deposits and investments may be made on behalf of the Commission; the custody of moneys required and the maintenance of accounts. The Central Government may amend, vary or rescind any regulation which it has approved; and thereupon the regulation shall have effect accordingly but without prejudice to the exercise of the powers of the Commission under sub-section (1) of Section 32.

131. The Life Insurance Corporation was established by the Life Insurance Corporation Act, 1956. Under Section 49 of the Act the Corporation may, with the previous approval of the Central Government, by notification in the Gazette of India, make regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act. The regulations may provide inter alia for the

powers and functions of the Corporation which may be delegated to the Zonal Managers the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents: the terms and conditions of service of persons who have become employees of the Corporation under Section 11 of the Act; the number, term of office and conditions of service of members of Boards constituted under Section 22 of the Act; the manner in which the Fund of the Corporation shall be maintained; the form and manner in which policies may be issued and contracts binding on the Corporation may be executed.

132. The Industrial Finance corporation was set up by the Industrial Finance Corporation Act, 1948. The superintendence of the business

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of the Corporation is entrusted to a Board of Directors. The Central Government may make rules in consultation with the Development Bank not inconsistent with the provisions of the 1948 Act and to give effect to the provisions of the Act. Sec. 43 of the Act enacts that the Board may with the previous approval of the Development Bank make regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act. The Development Bank means the Industrial Development Bank established under the Industrial Development Act, 1964. The shares of the Central Government in the Corporation shall stand transferred to the Development Bank when the Central Government shall so notify. The regulations provide inter alia for the holding and conduct of elections under this Act including the final decision of doubts or disputes regarding the validity of the election; the manner in which and the conditions subject to which the shares of the Corporation may be held and transferred; the manner in which general meetings shall be convened the procedure to be followed thereat; the duties and conduct, salaries, allowances and conditions of service of officers and other employees and of advisers and agents of, the Corporation.

133. All these Acts confer rule making power on the Central Government and it is not necessary to refer to them for the purpose of these cases. It is necessary only to refer to the regulation making power conferred on the three organisations under consideration. On behalf of these organisations the contention advanced was that the regulations relate to internal management, that the terms and conditions of service of employees as laid down in the regulations are not law but merely rules for the purposes of internal management. In so far as the appointments of the various employees of these three organisations are concerned they are appointed by contract and these regulations merely form part of those contracts. On behalf of the employees the contention was that as the source of the power to make regulations is the statute the regulations are themselves law.

134. Under cl. (51) of Section 3 of the General Clauses Act, 1897 "rule" means a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment.

135. Section 20 of the General Clauses Act reads as follows:

"20. Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall unless there is anything repugnant in

the subject or context, have the same respective meanings as in the Act or Regulation conferring the power."

The compendious term "Subordinate Legislation" refers to notifications, orders, schemes, rules and bye-laws referred to in Sections 20 and 21 of the General Clauses Act. It would be noticed that the word "order" used in the General Clauses Act is not used in the same sense that word is used in England where orders are excluded from the statutory definition of statutory rules as being administrative. The Committee on Ministers Powers suggested that regulations should be used for substantive law and rules for procedural law, while orders should be reserved to describe the exercise of executive power or the taking of a judicial or quasi-judicial decision. It would be noticed that this scheme is completely different from the Indian legislative practice. The word "order" very often is used in India for certain types of subordinate legislation for various control orders, like the "Rationing Order". There are a number of statutes on the Statute Book in India where the word "regulation" is used to refer to the regulations made by bodies other than the State. The word "rule" is always used to refer to the subordinate legislation made by virtue of powers conferred.

136. The regulations framed under the regulation making power conferred by the three Acts in question

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are not the regulations as defined in the General Clauses Act. In interpreting Indian statutes it is unnecessary and might sometimes be misleading to refer to the provisions of English law in connection with subordinate legislation. We have to refer only to the General Clauses Act and the Indian Legislative practice. Though "rule" is defined as including a regulation made as a rule, it cannot be said that regulation making power conferred on the three organisations in question is a rule-making power. Under the legislative practice in India the rule-making power is conferred on the State and the power to make regulations is conferred on bodies or organisations created by the statute.

137. The Air Corporations Act, 1953 which deals with Indian Airlines and Air India International confers power on the Central Government to make rules under Section 44 with regard to terms and conditions of service of the General Managers and such categories of officers as may be specified from time to time under sub-section (1) of Section 8. Under sub-section (2) of S. 8 every person employed by each of the Corporations shall be subject to such conditions of service and shall be entitled to such remuneration and privileges as may be determined by regulations made by the Corporation by which he is employed. Under Section 45 the Corporations have the power to make regulations among other things regarding terms and condition of service of officers and other employees of the Corporation other than the General Manager and officers of any other categories referred to in Section 44.

138. Under the All-India Institute of Medical Sciences Act, 1956 the Central Government has the power to make rules under Sec. 28, including the power to make rules regarding the conditions of service of members of the Institute, the allowances to be paid to the President and members of the Institute and the number of officers and employees that may be appointed by the Institute and the manner of such appointment. Under Section 29 the Institute has the power to make regulations regarding the allowances, if any, to be paid to the Chairman and the members of the Governing

Body and of standing and ad hoc committees and the tenure of office, salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute including teachers appointed by the Institute.

139. On the other hand, under the Central Silk Board Act, 1948 it is the Central Government that has the power to make rules regarding the staff which may be employed by the Board and the pay and allowances, leave and other conditions of service of officers and other employees of the Board. The Board has no power to make regulations.

140. Under the Chartered Accountants Act, 1949 it is the Council that has the power to make regulations about various matters. The Central Government has, however, the power to direct the Council to make any regulations or to amend or revoke any regulations already made within such period as it may specify in this behalf. There is however no rule making power conferred on the Central Government.

141. Under the Indian Coconut Committee Act, 1944 the Central Government has the power to make rules, including many others, the power for regulating grant of pay and leave to officers and servants of the Committee as also the pensions, gratuities, compassionate allowances, and travelling allowances. The power of the Committee to make regulations is, however, very limited and relates only to demanding security from officers and servants of the Committee and the Provident Fund.

142. Under the Coffee Act, 1942 only the Central Government has the power to make rules and the Coffee Board has no power to make any regulations.

143. Under the Coir Industry Act, 1953 the Central Government has the power to make regulations and the Board to make bye-laws regarding the appointment, promotion and dismissal of its officers and other employees other than the Secretary and the creation and abolition of their posts, as well as the conditions of service of its officers and other employees

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other than the Secretary including their pay, leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a provident fund for them.

144. Under the Cost and Works Accountants Act, 1959 only the Council has the power to make regulations and the Government has no power to make rules.

145. Under the Damodar Valley Corporation Act, 1948 the Central Government has the power to make rules and the Corporation to make regulations among other things regarding making of appointments and promotion of its officers and servants and specifying other conditions of service of its officers and servants.

146. Under the Dentists Act, 1948 the State Governments alone have the power to make rules including rules regarding the term of office and the powers and duties of the Registrar and other officers and servants of the State Dental Council. The State councils have no powers to make any regulations.

147. The Deposit Insurance Corporation Act, 1961 enables the Corporation to make regulations but confers no power on the Government to make rules.

148. Under the Electricity (supply) Act, 1948 the State Governments have the power to make rules and the Board makes regulations.

149. Under the Employees' State Insurance Act, 1948 the Central Government has the power to make rules in respect of certain matters and the State Governments in respect of certain other matters, but the Corporation has the power to make regulations regarding the method, of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of officers and servants of the Corporation other than the principal officers. The State Governments have the power to make rules regarding the conditions of service of staff employed in the hospitals, dispensaries and institutions maintained by the Corporation. The important point to note about provisions of this Act is that the regulations made by the Corporation shall be published in the Gazette of India and thereupon shall have effect as if enacted in the Act. It shows that where the Parliament intended that a regulation should have statutory effect it said so specifically. This also illustrates the provision of cl. (51) of Section 3 of the General Clauses Act which defines 'rule' as including a regulation intended to be made as a rule.

150. The Faridabad Development Corporation Act, 1956 confers the power to make rules on the Central Government but no power is given to the Corporation to make any regulations.

151. The Indian Medicine Central Council Act, 1970 confers the power to make rules on the Central Government and the power to make regulations on the Central Council of Indian Medicine including the power to make regulations regarding the tenure of office, and the powers and duties of the Registrar and other officers and servants of the Council and the appointment, powers, duties and procedure of inspectors and visitors.

152. The Industrial Development Bank of India Act, 1964 confers powers on the Board of Directors of the Bank to make regulations but no rule-making power on the Government.

153. The International Airports Authority Act, 1971 confers power on the Central Government to make rules and on the Authority to make regulations including regulations regarding the conditions of service and the remuneration of officers and other employees appointed by it.

154. The Khadi and Village Industries Commission Act, 1956 confers the power to make rules on the Central Government and the power to make regulations on the Commission including regulations regarding the terms and conditions of appointment and service and the scales of pay of officers and servants of the Commission other than the Secretary and the Financial Adviser to the Commission which are to be regulated by rules made by the Government.

155. Under the Life Insurance Corporation Act, 1956 the power to

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make rules is with the Central Government and the power to make regulations with the Corporation.

156. Under the Major Port Trusts Act, 1963, the Central Government has the power to make rules and the Board of Trustees for the Port the power to make regulations including the power regarding

the appointment, promotion, suspension, removal and dismissal of its employees, their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare, and the terms and conditions of service of persons who become employees of the Board.

157. The Marine Products Export Development Authority Act, 1972 enables the Central Government to make rules and the Marine Products Export Development Authority to make regulations.

158. The Indian Medical Council Act, 1956 confers power on the Central-Government to make rules and on the Council to make regulations including the tenure of office and the powers and duties of the Registrar and other officers and servants of the Council, the appointment, powers, duties and procedure of medical inspectors and visitors.

159. The Monopolies and Restrictive Trade Practices Act, 1969 confers the power to make rules on the Central Government and the power to make regulations on the Monopolies and Restrictive Trade Practices Commission.

160. The National Co-operative Development Corporation Act, 1962 confers the power to make rules on the Central Government and the power to make regulations on the Corporation.

161. I have gone through the various statutes only to point out that under the Indian Legislative practice rules are what the Central Government or the State Governments make and the regulations are made by any institution or organisation established by a statute and where it is intended that the regulation should have effect as law the statute itself says so. It is, therefore, as I stated earlier, unnecessary and may be even misleading to refer to the English practice in interpreting the word 'regulation'.

162. My learned brothers say that the regulations under the Oil and Natural Gas Commission Act provide for the terms and conditions of appointment and service and scales of pay of the employees of the Commission, regulations are imperative and the administrative instruction is the entering into contract with the particular person, but the form and content of the contract is prescriptive and not statutory. Administrative instructions are not necessarily in relation to a particular person, they may relate to a whole class of persons even as rules and regulations may. To say that because the regulations contained the terms and conditions of appointment they are statutory is to beg the question. I have extracted the power to make regulations found in the various statutes merely to show that the power to make regulations may be of different kinds. An institution like the Life Insurance Corporation which has its offices and employees all over the country has necessarily got to have a standard set of conditions of service for its various classes of employees. That is why they are made subject of regulations. But the mere fact that regulations are made in respect of the conditions of service of the employees of a certain institution or organisation does not mean that those conditions are statutory. No doubt these are the conditions of service applying to their employees. But if there is breach of those conditions it cannot be said that there is a breach of any statutory provision.

163. While rules are generally made by the Government, the regulations are made by a body which is a creature of the statute itself with its powers limited by the statute. While rules apply to all matters covered by the statute, the scope of the regulations is narrower being usually confined to

internal matters of the statutory body such as the conditions of service of its employees. When regulations standardise the conditions of service of the employees or purport to formulate them, their character is further diluted by the nature of the subject-matter

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For, service or employment is basically a contract which is deeply rooted in private law. A mere standardisation or enumeration of the terms of a service contract is not, therefore, ordinarily sufficient to convert it into a statutory status. For, the statute itself is silent and does not confer any security of tenure on the employee. The Corporation has a complete discretion in framing the regulations and giving such protection thereunder to its employees as it thinks fit. The amount of the protection thus depends on their own discretion. It is not given by a mandatory statutory obligation imposed on the Corporation from above. For the Corporation can vary the terms of the regulations at any time thus depriving its employees of the security of tenure of service. The matter is thus one between the employee and the employer which is precisely the case of a service contract. . A breach of such conditions is therefore a breach of the service contract remediable by damages rather than an ultra vires action to be set aside by a declaration or mandamus.

164. As argued on behalf of the three organisations the regulations are about the conditions of service which are offered to its employees in the form of a contract. The result of accepting the argument that these powers are statutory would be to hold that the employees of the various organisations and institutions which are governed by the various statutes I have enumerated above would be deemed to have their service condition fixed by statutes. Even assuming that their conditions of service are fixed by statute it does not mean that the removal of an employee contrary to those conditions would necessarily result in the removal having to be declared void. That was the position, for instance, under Section 96-B of the Government of India Act, 1919 till Section 240 was introduced in the Government of India Act, 1935. (See Venkat Rao's case, AIR 1937 PC 31, and Rangachari's case, AIR 1937 PC 27).

165. It does not seem correct to say that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. It is true that they have to offer terms and conditions as laid down in the regulations. But it is incorrect to say that they are not free to frame such terms and conditions as they think proper. They are the authorities to make the regulations and therefore can make any regulations regarding the conditions and terms of service of their employees and also change them as they please. It cannot therefore be said that they are bound by these terms and conditions of service. Indeed there is no obligation on them to make regulations regarding the terms and conditions of service of their employees. It has been held by this Court that in the case of public servants though the Governments have power to make rules under the proviso to Art. 309 or undertake legislation regarding terms and conditions of service of Government servants, they can either by administrative instructions or executive orders also regulate the terms and conditions of their service. Corporations also can do so and even if they make regulations those regulations cannot be said to be law in relation to them. While regulations made by one body which another body is bound to observe can be said to have the effect of law, the regulations which a body makes and can change and which it need not even make cannot be said to have the effect of law in relation to that body.

166. The learned Additional Solicitor General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the Companies Act. My learned brothers say that the fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. I do not see where the fallacy lies. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body makes regulations under the powers conferred by the statute creating that body. Both stand on the same footing as both derive their authority one from the Companies Act and the other from the Act which creates that body, for instance in the case of the Life Insurance Corporation

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from the Life Insurance Corporation Act, 1956. The fact that a Corporation like the Life Insurance Corporation is created by the statute itself and a company comes into existence in accordance with the provisions of the Companies Act does not make any difference to this situation. Merely because a body happens to be a statutory body it does not become any the less entitled to frame regulations which would be of the same kind as the regulations made by a company. Whether a corporation or a company is created by a statute or under a statute does not make any difference to this principle.

167. The logic of the three decisions, the validity of which my learned brothers have accepted in their decision in .W.P. No. 43 of 1972 = (AIR 1975 SC .1329) requires that it should be applied to the employees of these three organisations. There is no reason in principle why a different result should follow just because a Corporation happens to be established by a statute whereas it is different in the case of a company. Whether an institution or organisation is established by a statute or under a statute in principle there is no difference between their powers. Ultimately unless it should be held that the institution or organisation, in question is an 'authority' within the meaning of the term in Article 12 of the Constitution there can be no question of the regulations framed by those organisations being deemed to be law.

168. in order that an institution must be an 'authority' it should exercise part of the sovereign power or authority of the State. See in this connection the definition of the word in the General Clauses Act, which reads as follows:

"Local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

They are all concerned with exercising part of the powers of the State. That is why a Port Trust is given even the power to make regulations to provide that a breach of its regulations would be punishable. In such a case it is undoubtedly exercising part of the power of the State. The whole purpose of the provisions of Part III of the Constitution is to confer fundamental rights on the citizen as against the power of the State or those exercising the power of the State. None of these corporations do so and so they cannot be the 'State' or 'authority'.

169. The case in *British Broadcasting Corpn. v. Johns* (1965 (1) Ch.32) is very much in point. It is not necessary to burden this judgment by quoting extensively from that decision. It was held there that the B.B.C. was not an instrument of Government. It was argued in that case that the Crown was

entitled to a monopoly of broadcasting and therefore the Government purposes also include non-traditional provinces of Government if the Crown has constitutionally asserted that they are to be within the province of Government. Willmer, L. J. quoted with approval the remarks of Wilberforce, J., against whose judgment the Court of Appeal was being heard, to the effect:

"So I come to the conclusion that however widely one may be inclined to extend the conception of an act or function of government the Crown has not taken the path of engaging itself in a broadcasting service or of entrusting it to any agent. It has deliberately chosen the alternative of an independent instrument."

There can be no doubt that that is the position in respect of the three corporations we are dealing with.

170. The distinction between governmental functions and commercial functions is, therefore, clear enough. Even in the United States of America this distinction is clearly kept in mind. In ((1945) 90 Law ed. 326) it was remarked:

"That there is a constitutional line between the State as government and the State as trader, was still more recently made the basis of a decision sustaining a liquor tax against Ohio. "If a State chooses to go into the business of buying and selling commodities, its right to do so may be conceded so far as the Federal Constitution is concerned; but the exercise of the

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right is not the performance of a governmental function. . . .When a State enters the market place seeking customers it divests itself of its quasi sovereignty pro tanto, and takes on the character of a trader, so far, at least, as the taxing power of the federal government is concerned." (supra) ((1933) 292 US 360 at p. 369 = 78 Law ed 1307 at p. 1310 - 54 S Ct 725). When the Ohio Case was decided it was too late in the day not to recognize the vast extension of the sphere of government, both State and national, compared with that with which the Fathers were familiar. It could hardly remain a satisfactory constitutional doctrine that only such State activities are immune from federal taxation as were engaged in by the States in 1787. Such a static concept of government denies its essential nature. The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to exigencies of the state as they arise. It is the science of experiment.. Anderson v. Dunn, (1820) 6 Wheat 204 (226) = 5 Law ed. 242, (247).

When this Court came to sustain the federal taxing power upon a transportation system operated by a State it did so in ways familiar in developing the law from precedent to precedent. It edged away from reliance on a sharp distinction between the "governmental" and the "trading" activities of a State, by denying immunity from federal taxation to a State when it "is undertaking a business enterprise of a sort that is normally within the reach of the federal taxing power and is distinct from the usual governmental functions that are immune from federal taxation in order to safeguard the necessary independence of the State." *Helvering v. Powers*, supra ((1934) 293 US 214 at p. 227 = 79 Law ed 291 at p. 296, 55 S Ct 117).

It is, therefore, clear that Article 298 of the Constitution cannot be resorted to for supporting the proposition that when the State enters into non-governmental activities that should also be

considered to be a governmental function. In this connection the history of Article 298 as it is at present may be noted.

171. In *Ranjit Kumar Chatterjee v. Union of India*, (AIR 1969 Cal 95) Basu, J. dealing with similar contention advanced before him, observed as follows:

"(iii) Mr. Dutt, for the petitioner relied strongly upon the provision in Article 298, as amended by the Constitution (Seventh Amendment) Act, 1956, to argue that when Government takes up a business, it does so in the exercise of its 'executive power' and therefore, whatever be the agency through which Government may carry on a business, that is identified with the Government.

This argument, however, overlooks the object and scope of the Amendment of the Article. Prior to this amendment, it was held in some cases that since there was no express provision empowering the Government to enter into a trade, this could not be done without legislative sanction - *Moti Lal v. State of U. P.* (AIR 1951 All 257 FB). This view was overruled by the Supreme Court in the case of *Ram Jawaya v. State of Punjab* (1955-2 SCR 225 - AIR 1955 SC 549) and the Amendment of 1956 simply codifies the effect of the decision in *Ram Jawaya's* case (1955-2 SCR 225 = AIR 1955 SC 549) namely that legislation is not required to empower a Government to carry on a business it can do so in the exercise of its executive power, except, of course, where a law is required by some other provision of the Constitution say, Article 19 (6). But the effect of the amendment is not to convert a commercial function of the Government into a governmental function. It is to be noted that even where a State Government carries on a business it cannot be treated as a governmental function to claim immunity from Union taxation, without a declaration by Parliament by law under Article 289 (3) vide AIR 1964 SC 1486 at p. 1492. If the Central Government carries on a business it can never be treated as a governmental function to claim immunity from State taxation because Article 285 (1)

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simply speaks of the property of the Union and no business.

It has been held by the Supreme Court that even, when the Government carries on a business departmentally as in the case of Railway, it cannot be treated as a 'sovereign function' for the purpose of 'suability'. But that principle would not apply for the purpose of determining the status of its employees under Article 311. When the business is carried on by a Department of the Government, as in the case of Railways, obviously, the employees hold under the Government and not under any separate juristic entity, and so it has been held in numerous cases of *Parshotam v. Union of India*, (AIR 1958 SC 36), *Moti Ram v. N.E.F. Rly.* (AIR 1964 SC 600). The reason is obvious, namely, where the employer is a Department of the Government, no question of a separate legal entity arises.

The question, however, becomes different, where the business is carried on through a separate legal person e.g. a statutory corporation or a company (vide AIR 1966 SC 1364) because in such a case, the employee is a servant, of a legal entity other than the Government."

172. The reference to Art. 297 of the Constitution in relation to the Oil and Natural Gas Commission's case is not apt either. That Article does not declare that all oil wherever found is the property of the Government. It is only the oil found under the land in the territorial waters and the

continental shelf that is the property of the Government. This would be also clear if one looks at the Oil Fields (Regulation and Development) Act, 1948.

173. The decision in (1950-1 KB 18) is very much in point in deciding the questions that arise in the present case. That case was concerned with the question whether the British Transport Commission was a servant or an agent of the Crown. It was brought into existence by a special statute which had many of the qualities which belonged to corporations of other kinds. It had defined powers which it could not exceed. There were no shareholders to subscribe the capital. The money which the Corporation needed was raised by borrowing and was guaranteed by the Treasury. If it could not repay the loss fell on the Consolidated Fund of the United Kingdom. All those who used the services which it provided and all whose supplies depended on it were concerned in seeing that it was properly run. The protection of the interests of the taxpayer, user and beneficiary was entrusted by Parliament to the Minister of Transport. He was given powers over this corporation which were as great as those possessed by a man who held all the shares in a private company, subject, however, to a duty to account to Parliament for his stewardship. It was the Minister who appointed the directors, the members of the Commission, and fixed their remuneration. They must give him any information he wanted. He was given power to give them directions of a general nature and they were bound to obey. The Court of Appeal said:

"These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property."

Further on they remarked:

"But the carriage of passengers and goods is a commercial concern which has never been the monopoly of anyone and we do not think that its unification under state control is any ground for conferring Crown privileges upon it.

The only fact in this case which can be said to make the British Transport Commission a servant or agent of the Crown is the control over it which is exercised by the Minister of Transport; but there is ample authority both in this Court and in the House of Lords for saying that such control as he exercises is insufficient for the purpose.. In the absence of any such express provision, the proper inference, in the case, at any rate, of a commercial corporation, is that it

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acts on its own behalf, even though it is controlled by a government department"

The case for considering anyone of the three corporations under consideration as a public authority is much weaker than that either of the British Broadcasting Corporation, (1965) 1 Ch. 32 or the British Transport Commission.

174. In (1898) 2 QB 91 in regard to by-laws it was said:

"But first it seems necessary to consider what is a by-law. A by-law, of the class we are here considering, I take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the by-law, they would be free to do or not do as they pleased. Further, it involves this consequence---that, if validly made, it has the force of law within the sphere of its legitimate operation."

Contrast these with the effect of the regulations which we are considering. These regulations apply only to the employees of the corporation. They do not affect the public or any portion of the public, they do not order something to be done or not to be done accompanied by some sanction or penalty for its non-observance. Indeed it is this test that was applied in the Rajasthan Electricity Board's case, (1967-3 SCR 377) = (AIR 1967 SC1857).

175. In Halsbury's Laws of England (3rd ed., Vol. 9, p. 40) the law is set out thus:

"All regulations made by a corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called "bye laws," whether they are valid or invalid in point of law; but the term may also be applied to regulations binding only on the corporation, its officers and servants.

The distinction here is brought out between what we would call rules and regulations in our country.

175A. Allen in his work 'Law and Orders' (3rd ed., p. 324) refers to the question raised in (1950) 1 KB 18 (supra). After noting that it was undoubtedly a public authority with large powers, and a considerable measure of control was exercised over it, under the Transport Act, 1947, by the Minister of Transport; but in its activities, its liabilities, the status of its employees, and its subordination to statute, it was essentially a separate corporate body, in no way comparable to a Government department, goes on to observe:

"It is interesting to note that had the decision been otherwise everyone of the half-million (approximately) employees of the railways alone would have become a "servant or agent" of the Crown, entitled to the privileges of that status."

That unfortunately would be the effect of what my learned brothers have chosen to do in their judgment.

176. It is now time to refer to the decisions of this Court relevant to the subject.

177. In (1964 (4) SCR 99) = (AIR 1963 SC 1811) Justice Shah pointed out that:

"The question whether a corporation is an agent or servant of the State must be decided on the facts of each case. In the absence of any statutory provision, a commercial corporation acting on its behalf, even if it is controlled wholly or partially by a Government department, will be presumed not to be a servant or an agent, of the State. Where, however, the corporation is performing in substance governmental, and not commercial, functions, an inference will readily be made that it is an agent of the Government. "

The case, in (1950) 1 KB 18 was relied upon for this proposition.

178. In (1964 (5) SCR 528) = (AIR 1964 SC 847) the order under consideration was one issued by the central Government under Sec. 11 (2) of the Act in exercise of its powers under that section. By that section it was the Central Government that was given the power to alter (whether by way of reduction or otherwise) the remuneration and other terms and conditions

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of service to such an extent and in such manner as it thought fit. That power so conferred was to be exercised notwithstanding anything contained in sub-section (1), or in the Industrial Disputes Act, 1947, or in any other law for the time being in force, or in any award, settlement or agreement for the time being in force. The order therefore had statutory effect and the order of termination of services of the employee was therefore in contravention of the statutory provision. That decision cannot therefore support any argument that regulations made under a statute have statutory effect.

179. In (1964 (7) SCR 17) = (AIR 1964 SC 1486) a Constitution Bench of this Court held that State Road Transport Corporation is not the State. In that judgment the decision in (1950) 1 KB 18 was also referred to and after an exhaustive analysis of the various sections of the Act it was pointed out that:

"...all the relevant provisions emphatically bring out the separate personality of the corporation and proceed on the basis that the trading activity is run by the corporation and the profit and loss that would be made as a result of the trading activity would be the profit and loss of the corporation. There is no provision in the Act which has attempted to lift the veil from the face of the corporation and thereby enable the shareholders to claim that despite the form which the organisation has taken, it is the shareholders who run the trade and who can claim the income coming from it as their own."

180. The decision in *K. S. Ramamurthi Reddiar v. Chief Commr. Pondicherry*, (1964 (1) SCR 656) (AIR 1963 SC 1464) is not helpful in deciding what an authority is because the appellate authority in that case was a quasi-judicial authority.

181. In *Kasturilal v. State*, (1965 (1) SCR. 375) = (AIR 1965 SC 1039) a Constitution Bench of this Court after an exhaustive reference to all the earlier decisions pointed out:

"It is not difficult to realise the significance and importance of making such a distinction particularly at the present time, when, in the pursuit of their welfare ideal, the Governments of the States as well, as the Government of India naturally and legitimately enter into many commercial and other undertakings and activities which have no relation with the traditional concept of governmental activities in which the exercise of sovereign power is involved. It is necessary to limit the area of these affairs of the State in relation to the exercise of sovereign power, so that if acts are committed by Government employees in relation to other activities which may be conveniently described as non-governmental or nonsovereign, citizens who have a cause of action for damages should not be precluded from making their claim against the State. That is the basis on which the area of the State immunity against such claims must be limited."

It would, therefore, be wrong to consider the words "other authorities" in Article 12 as including any corporation which does not exercise part of the governmental functions of the State.

182. The Rajasthan State Electricity Board v. Mohan Lal (1967 (3) SCR 377) = (AIR 1967 SC 1857) is a very important decision. After noting the meaning of the word "authority" given in Webster's Third New International Dictionary, the majority went on to point out that the dictionary meaning of the word "authority" was wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The first point to be noted is that, none of the functions with which the three corporations under consideration are concerned, are governmental or quasi governmental functions. The work done by the Oil and Natural Gas Commission always used to be done by the various oil companies like Burmah Shell, Standard Vacuum etc. The work done by the Life Insurance Corporation was done by various insurance companies and the Industrial Finance Corporation is merely carrying out functions which any bank can carry on. When the majority further went on to observe:

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"The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India;"

it can only be with regard to authority exercising governmental or quasi governmental functions. The clue to the decision is given really in the following passage:

"The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Art, 12. On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. The Board was clearly an authority to which the provisions of Part III of the Constitution were applicable "

This makes it clear that the fact that the Board carried on activities in the nature of trade or commerce could be a ground for excluding it from the scope of word "State" but for the fact that it was given powers to give directions the disobedience of which was punishable as a criminal offence.

183. We need not now pause to consider whether where a body carries out functions both with regard to trade and commerce and also exercises powers which only a State can exercise like giving directions the disobedience of which is punishable as a criminal offence, the obligations and restrictions which are imposed by the Constitution on the exercise of those powers by the State should not be confined to those powers and with regard to the carrying on of the trade and commerce it should not be treated as any other ordinary commercial concern.

184. Justice Shah's concurring judgment brings out in sharp focus the ratio of the decision by the majority. He said:

"The Board is an authority invested by statute with certain sovereign power of the State. ...and to issue directions under certain provisions of the Act and to enforce compliance with those directions. The Board is also invested by statute with extensive powers of control over electricity undertakings. The power to make rules and regulations and to administer the Act is in substance the sovereign

power of the State delegated to the Board. The Board is in my judgment, "other authority" within the meaning of Art. 12 of the Constitution.

...The expression "authority" in its etymological sense means a body invested with power to command or give an ultimate decision, or enforce obedience, or having a legal right to command and be obeyed. In considering whether a statutory or constitutional body is an authority within the meaning of Art. 12, it would be necessary to bear in mind not only whether against the authority, fundamental rights in terms absolute are intended to be enforced, but also whether it was intended by the Constitution-makers that the authority was invested with the sovereign power to impose restrictions on very important and basic fundamental freedoms.

In my judgment, authorities constitutional or statutory invested with power by law but not sharing the sovereign power do not fall within the expression "State" as defined in Art. 12. Those authorities which are invested with sovereign power, i.e., power to make rules or regulations and to administer or enforce them to the detriment of citizens and others fall within the definition of "State" in Art. 12, and constitutional or statutory bodies which do not share that sovereign power of the State are not, in my judgment, "State" within the meaning of Art. 12 of the Constitution.

This is not in any way contrary to what majority decided but only explains and brings out in bold relief what has been laid down by the majority.

185. In *Co-op. Central Bank Ltd. v. Indust. Tribunal. Andhra Pradesh*, (1970 (1) SCR 205) = (AIR 1970 SC 245) it was held:

"The principle that rules framed under a statute have the force of statute does not apply to bye-laws of a

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cooperative society. They merely govern the internal management, business or administration of a society and may be binding between the persons affected by them but are neither law nor do they have the force of law. They are just like conditions of service laid down by contract between the parties, or like bye-laws under the Articles of Association of a company under the Companies Act, or Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946. Therefore, the circumstances that in granting relief, the Tribunal may have to vary the special bye-laws framed by the Cooperative Banks does not lead to the inference that the Tribunal would be making orders contrary to law and therefore is incompetent to grant the reliefs claimed. The jurisdiction granted to the Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering existing laws and enforcing existing contracts. The Tribunal has the jurisdiction even to vary contracts of service between employer and employees. Further in the Andhra Act there is no prohibition that the conditions of service prescribed are not to be altered. Therefore the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the Registrar's powers under the Cooperative Societies Act."

186. The main contention on behalf of the three organisations put forward by the learned Addl. Solicitor General was that if we hold that these corporations are State and the regulations as having the force of law there would be no room for any reference to the Industrial Tribunal under the Industrial Disputes Act, and that would be a great disadvantage from which the labour would suffer.

187. In Warehousing Corpn, v. Tyagi (1970 (2) SCR 250) = (AIR 1970 SC 1244) it was held:

"A declaration to enforce a contract of personal service will not normally be granted. The exceptions are: (i) appropriate cases of public servants who have been dismissed from service in contravention of Art. 311; (ii) dismissed workers under industrial and labour law; and (iii) when a statutory body has acted in breach of a mandatory obligation imposed by a statute."

On the facts of this case it was held that a breach had been committed by the appellant of regulation 16 (3), but such an order made in breach of the regulations would only be contrary to the terms and conditions of relationship between the appellant and the respondent and it would not be in breach of any statutory obligation because the Act does not guarantee any statutory status to the respondent, nor does it impose any obligation on the appellant in such matters. Therefore, the violation of the regulation could not have the effect of treating the employee as still in service or entitling him to reinstatement. This case was rightly relied upon by the learned Addl. Solicitor General as supporting his point .

188. The decision in I.A.C. v. Sukhdeo Rai, (1971 (Supp) SCR 510) : (AIR 1971 SC 1828) had to consider the case of the Indian Airlines which is one of the parties in the cases before us. This Court referred to its earlier decisions in Tewari's Case, (1964 (3) SCR 55) = (AIR 1964 SC1680) and Rajasthan State Electricity Board case, (AIR 1967 SC 1857) (supra) and distinguished the case in (1964) 5 SCR 528 = (AIR 1964 SC 847) (supra). It also explained Naraindas Barot's case, (1966. (3) SCR 40)= (AIR 1966 SC 1364). It then held that:

"Though made under the power conferred by statute, the regulations merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them. That being so, and the Corporation having undoubtedly power to dismiss its employees, the dismissal of the respondent was with jurisdiction and although it was wrongful in the sense of its being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent, it did subsist.

The present case, therefore, does not fall under any of the three well recognised exceptions laid down by this, Court hence the respondent was

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only entitled to damages and not to the declaration that his dismissal was null and void."

189. My learned brothers have referred to Naraindas Barot's case, (1966 (3) SCR 40) = (AIR 1966 SC 1364) and state that as, it was decided by the Constitution Bench, the U. P. Warehousing Corporation's case (1970 (2)SCR 250)=(AIR 1970 SC 1244) and the Indian Airlines case (1971 (2) SCC 192) = 1971(Sup) SCR 510 = (AIR 1971 SC 1828) are in direct conflict with the former decision in Naraindas Barot's case. The question whether the Road Transport Corporation was a State within the meaning of that term under Art 12 of the Constitution was neither raised nor decided there. Nor was the question whether the regulations under consideration in that case were of a statutory character raised or decided. That case is not an authority for the proposition that the Road Transport Corporation was a State or that its regulations had the effect of law. The discussion in this case would therefore have to proceed on the basis that it lays down no ratio and the U. P. Warehousing

Corporation and the Indian Airlines cases are still good law. The Sirsi Municipality case (1973 (1) SCC 409)= (AIR 1973 SC 855) and Tewari's case (1964 (3) SCR 55= (AIR 1964 SC 1680) stand, however, on a different footing. They are both concerned with bodies which were undoubtedly local bodies and therefore a State and they could provide no support for the view which my learned brothers have taken.

190. It only remains to deal with the two points made by the learned Addl. Solicitor General for the Corporations. One was that if the regulations are held to be law the remedy under the Industrial Disputes Act would not be available to the employees of these Corporations because under the Industrial Disputes Act the Tribunals have the right to form a new contract for the parties if the employment is a matter of contract but it cannot do so if it is a matter of statute and the decision that the regulations are law would have the result of causing detriment to the interest of the employees. I do not think that that consideration need deter us from holding that the regulations are law if it could be so held on other grounds.

191. Another argument of his was that these employments are a matter of personal service and therefore the test whether the contract could be specifically enforced should be taken into consideration in deciding whether a declaration that a dismissal of an employee in any case is void and he should be reinstated. I do not think that in the modern commercial and industrial world the idea of personal service has much relevance. It might have had its place in the context of 19th Century. There is no question of personal service in a large commercial or industrial organisation and this consideration need not therefore stand in the way of our accepting the employees' contention if it is otherwise acceptable.

192. The various provisions contained in respect of the various organisations like the State Road Transport Corporation or the British Transport Commission in (1950) 1 KB 18 would show that the power of control or even the financial interest of the State in these Corporations was as high as, if not higher than, that of the State in these three corporations under consideration. So none of the considerations mentioned by my learned brothers would help them to reach the conclusion that these corporations are the State. The power of the owner in hire-purchase agreement and the power of the mortgagee under S.69 of the Transfer of property Act to sell the mortgaged property by exercising his right of private sale can be usefully compared in connection with the powers conferred on the Industrial Finance Corporation. Nor do I think that Section 25 of the Oil and Natural Gas Commission Act, 1959 would make it a State. The test laid down for deciding what is a State in the Rajasthan Electricity Board case, (AIR 1967 SC 1857) that is of commanding other people to do or not to do a thing on pain of punishment, is not there. I do not see how, as long as that decision holds the field, it is open to this Bench to take a different view. All the other decisions of this Court have followed only that

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view. The decision of my learned brothers is unsupportable in principle against the weight of authority and fraught with serious consequences. Suddenly overnight by the fiat of this Court all those bodies which till yesterday were not considered to be a State or other authority would be considered to be other authority and their employees entitled to provisions of Part III of the Constitution. We would be opening a veritable Pandora's box. The protections given to Government servants in India have no parallels anywhere in the world. They were getting on well enough till the

Government of India Act, 1935. Till then there was no statutory protection given to them (See Venkata Rao's case (AIR 1937 PC 31) (supra) and Ranagachari's case (AIR 1937 PC 27) (supra). It is a well-known fact that it was the lack of confidence of the British Government in the capacity of the Indians to manage their own affairs that led to Section 240 becoming part of the Government of India Act, 1935. This section is a forerunner of the present Article 311 of the Constitution. It is to be wondered why the framers of the Constitution should have copied the provisions of the Government of India Act, 1935 with regard to Government servants. Be that as it may, there at least we have got the saving grace of Article 310. One's experience in the various High Courts as well as in this Court would have made it amply clear that not merely Art. 311 but Articles 14 and 16 are resorted to by various Government servants to take up matters till the Court of the last resort even in petty matters like seniority, scale of pay and even minor punishments. Many a time have the learned Judges of this Court felt unhappy about the time of the Court being taken for days together by petty matters relating to Government servants and wished that there were a separate Court for dealing with these matters. By deciding that organisations like the ones under consideration in these cases are 'other authority' and the regulations they make is law we would at once at one stroke be creating a large mass of neo-Government servants and Articles 14 and 16 would provide ample opportunities for endless litigation. One would readily agree that labour whether employed by private industry or industry run by the Government should be treated equally. But that one class of labour, that is labour employed in industry run by the Government, should be more equal than others is a proposition which no reasonable minded person can agree to. The employees of the public sector industries would get even more advantages than even the Government servants to whom Articles 309, 310 and 311 apply. In the name of industrial action life will be paralysed. They are not subject to same rules and regulations or discipline to which the Government servants are subject. They would be different from the days when they were treated like employees of private firms and were subject to the ordinary law of master and servant and become entitled to be treated even better than the Government employees. One has only to refer to one's experience of what has happened to the Life Insurance Corporation or the various nationalised banks since they were nationalised. Misplaced sympathy is sometimes responsible for our attitude to labour. These days labour is not the weak and helpless force that it was in the 19th Century. They are strong, well organised, rich and powerful. In England the Trade Union Congress is able to dictate to successive Government on all sorts of matters. In America it is said that industrial managers have to wait hat-in-hand before the officers of the trade union bosses. George Meany of the A.F.L and C.I.O is able to dictate to the Government. One has only to refer to Jimmy Hoffa of the Teamster's Union in America to know how powerful trade unions are. To the legitimate armoury of labour like strike and picketing and industrial negotiations this country has dubious distinction of having added 'gherao', a most uncivilised form of wrongful confinement in order to force concessions from managements and even heads of institutions, even educational institutions. There is no question there of any negotiations. The management or the head of the institution has to either surrender or be prevented from eating or even answering calls

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of nature and to be kept incommunicado with the outside world. These are not dire forebodings of what will happen but merely an enumeration of what is actually happening. With the trade unions coming up to this Court even in matters of minor punishment of a single workman and sometimes even against interim orders of industrial tribunals it would be litigants' paradise.

193. I have read the judgment of my learned brother Mathew, J. with great interest and respect for the vast amount of learning and philosophical consideration that he has bestowed on the subject. It is obvious therefrom, however, that he realises that the earlier decisions of this Court do not support the view taken by him or my other learned brethren. What he, says about labour and the public service corporations, at best establish that they should be subject to control. But it does not establish that public service corporations owned by the Government should be treated differently from other public service corporations. That is why I said it is reasonable that labour in both cases should be treated alike. It does not establish that labour in public service to corporations owned by Government should be treated like Government servants engaged in administering or enforcing functions and duties connected with governmental functions.

194. I would hold that Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation are not authorities within the meaning of Article 12 of the Constitution and regulations framed by them have no force of law. The employees of these statutory bodies have no statutory status and they are not entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions.

BY ORDER OF THE COURT.

195. Rules and Regulations of the Oil and Natural Gas Commission, Life insurance Corporation. Industrial Finance Corporation have the force of law.

196. The employees of these statutory bodies have a statutory status and they are entitled to a declaration of being in employment when their dismissal or removal is in contravention of statutory provisions.

197. These statutory bodies are authorities within the meaning of Art. 12 of the Constitution.

198. In Civil Appeal No. 2137 of 1972, the declaration granted by the High Court that the order removing Bhagatram Sardarsingh Raghuvansi from service is null and void and that he continues in service is upheld. The writ of mandamus issued by the High Court is also upheld.

199. In Civil Appeal No. 1655 of 1973, the writ of mandamus granted by the High Court is upheld.

200. In Civil Appeal No. 1879 of 1972, our conclusion is that the Corporation is an authority within the meaning of Art. 12 of the Constitution for the reasons given in this judgment. The conclusion of the High Court that the regulations have not the force of law is set aside. The conclusion of the High Court that Corporation should not be permitted to enforce the regulations mentioned in clauses (1) and (4) of Regulation 25 is upheld.

201. In Civil Appeal No. 115 of 1974, the judgment of the High Court is set aside. The Finance Corporation is an authority within the meaning of Article 12. The Regulations of the Corporation have the force of law. The conclusion of the High Court that the Association is not entitled to raise a plea of discrimination on the basis of Art. 16 is set aside.

202. The appeals are disposed of accordingly.

203. The parties will pay and bear their own costs in all these appeals. Order accordingly.

**AIR 1979 SUPREME COURT 1628**

(From: Bombay)*

P. N. BHAGWATI, V. D. TULZAPURKAR AND R. S. PATHAK, JJ.

Civil Appeal No. 895 of 1978, D/- 4 -5 -1979.

Ramana Dayaram Shetty, Appellant v. The International Airport Authority of India and others, Respondents.

(A) Contract Act (9 of 1872), S.10 - Tenders called for running restaurant and snack bars at Air Port - Terms of contract - Interpretation.**Deed - Construction.**

The Tender Notice stated in clear terms that "sealed tenders in the prescribed form are hereby invited from Registered IInd Class Hoteliers having at least 5 years' experience for putting up and running a IInd Class Restaurant and two Snack Bars at this Airport for a period of 3 years."

Held, that on a proper construction what the notice required was that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to submit a tender. This was a condition of eligibility and it is difficult to see how this condition could be said to be satisfied by any person who did not have five years' experience of running a IInd Class hotel or restaurant. The test of eligibility laid down was an objective test and not a subjective one. (Para 7)

(B) Constitution of India, Art.12 and Art.14 - International Airport Authority is State - Tenders called for running restaurant and snack bars - Qualifications laid down as requisite - It cannot accept tender of person who does not fulfil the requisite qualifications. (Paras 20, 21, 33, 34)

Cases Referred :**Chronological Paras**

AIR 1978 SC 597 : (1978) 1 SCC 248	21
AIR 1975 SC 266 : (1975) 2 SCR 674	12, 21
AIR 1975 SC 984 : (1975) 3 SCR 82 : 1975 Lab IC 613	10
AIR 1975 SC 1329 : (1975) 1 SCC 485 : 1975 Lab IC 819	31
AIR 1975 SC 1331 : (1975) 3 SCR 619 : 1975 Lab IC 881	10, 13, 15, 16, 18, 27, 33
AIR 1974 SC 555 : (1974) 2 SCR 348 : 1974 Lab IC 427	21
AIR 1974 SC 651 : (1974) 3 SCR 64	26
(1974) 419 US 345 : 42 L Ed 2d 477 Catherine Jackson v. Metropolitan Edison Co.	15, 19
AIR 1972 SC 1816 : (1972) 2 SCC 36 : 1972 Tax LR 2298	25, 26
AIR 1971 SC 733 : (1971) 3 SCC 153	24, 26
AIR 1970 SC 82 : (1969) 3 SCR 995 : 1970 Lab IC 212	29
AIR 1970 SC 1150 : (1970) 3 SCR 363 : 1970 Lab IC 1029	30
AIR 1969 SC 1081 : (1969) 3 SCR 374	22, 23
AIR 1969 SC 1306 : (1969) 3 SCR 773	28
AIR 1969 Ker 81 (FB)	12
AIR 1967 SC 1857 : (1967) 3 SCR 377	27
(1966) 382 US 296 : 15 L Ed 2d 373, E. S. Evans v. Charles E Newton	16, 18
(1964) 1 Ch 614 : (1963) 3 All ER 779, Pfizer v. Ministry of Health	16
AIR 1959 SC 490 : (1959) Supp (1) SCR 787	23
(1959) 359 US 535 : 3 L Ed 2d 1012, Vitarelli v. Seaton	10
(1945) 326 US 501 : 90 L Ed 265, Marsh v. Alabama	17
(1945) 326 US 572 : 90 L Ed 326, New York v. United States	16
(1943) 321 US 649 : 88 L Ed 987, Smith v. Allwright	18
(1937) 304 US 405 : 82 L Ed 1427, Helvering v. Gerhardt	16

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(1816-19) 4 Wheat 316 : 4 L Ed 579, *Macculloch v. Maryland* 13
149 F 2d 212, *Kerr v. Enock Pratt Free Liabrary* 15

Mr. Ashok H. Desai and Mr. Y. S. Chitale, Sr. Advocates (M/s. Jai Chinai and P. G. Gokhale and B. R. Agarwal, Advocates with them), for Appellant; Mr. G. B. Pai, Sr. Advocate (M/s. O. C. Mathur and D. N. Mishra, Advocates with him) (for No. 1) and Mr. F. S. Nariman (Sr. Advocate) M/s. R. H. Dhebar, S. K. Dholakia, H. H. Yagnik and B. V. Desai, Advocates with him) (for No. 4), for Respondents.

* Appeal No. 234 of 1977, D/- 23-1-1978-Bom.

Judgement

BHAGWATI, J.:- This appeal by special leave raises interesting questions of law in the area of public law. What are the constitutional obligations on the State when it takes action in exercise of its statutory or executive power? Is the State entitled to deal with its property in any manner it likes or award a contract to any person it chooses without any constitutional limitations upon it? What are the parameters of its statutory or executive power in the matter of awarding a contract or dealing with its property? These questions fell in the sphere of both Administrative law and Constitutional law and they assume special significance in a modern welfare State which is committed to egalitarian values and dedicated to the rule of law. But these questions cannot be decided in the abstract. They can be determined only against the background of facts and hence we shall proceed to state the facts giving rise to the appeal.

2. On or about 3rd January, 1977 a notice inviting tenders for putting up and running a second class restaurant and two snack bars at the International Airport at Bombay was issued by the 1st respondent which is a corporate body constituted under the International Airport Authority Act, 43 of 1971. The notice stated in the clearest terms in paragraph (1) that "sealed tenders in the prescribed form are hereby invited from Registered IInd Class Hoteliers having at least 5 years' experience for putting up and running a IInd Class Restaurant and Two Snack Bars at this Airport for a period of 3 years". The latest point of time up to which the tenders could be submitted to the 1st respondent was stipulated in Paragraph 7 of the notice to be 12 p.m. on 25th January, 1977 and it was provided that the tenders would be opened on the same date at 12.30 hours. Paragraph (8) of the notice made it clear that "the acceptance of the tender will rest with the Airport Director who does not bind himself to accept any tender and reserves to himself the right to reject all or any of the tenders received without assigning any reasons therefor." There were six tenders received by the 1st respondent in response to the notice and one of them was from the 4th respondents offering a licence fee of Rupees 6,666.66 per month, and the others were from Cafe Mahim, Central Catering Service, one A. S. Irani, Cafe Sea-side and Cafe Excelsior offering progressively decreasing licence fee very much lower than that offered by the 4th respondents. The tenders were opened in the office of the Airport Director at 12.30 p.m. on 25th January, 1977 and at that time the 4th respondents were represented by their Sole Proprietor Kumaria, A. S. Irani was present on behalf of himself, Cafe Mahim, Cafe Seaside and Cafe Excelsior and there was one representative of Central Catering Service. The tenders of Cafe Mahim, Central Catering Service, Cafe Seaside and Cafe Excelsior were not complete since they were not accompanied by the respective income-tax certificates, affidavits of immovable property and solvency certificates, as required by cl. (9) of the terms and conditions of the tender form. The tender of A. S. Irani was also not complete as it was not accompanied by an affidavit of immovable property held by him and solvency certificates. The only tender which was complete and fully complied with the terms and conditions of the tender form was that of the 4th respondents and the offer contained in that tender was also the highest amongst all the tenders. Now it is necessary to point out at this stage that while submitting their tender the 4th respondents had pointed out in their letter dated 24th January, 1977 addressed to the Airport Director that they had 10 years' experience in catering to reputed commercial houses, training centres, banks and factories and that they were



also doing considerable outdoor catering work for various institutions. This letter showed that the 4th respondents had experience only of running canteens and not restaurants and it appeared that they did not

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satisfy the description of "registered IInd Class Hotelier having at least 5 years' experience" as set out in paragraph (1) of the notice inviting tenders. The Airport Officer, therefore, by his letter dated 15th February, 1977 requested the 4th respondents to inform by return of post whether they were 'a registered IInd Class Hotelier having at least 5 years' experience' and to produce documentary evidence in this respect within 7 days. The 4th respondents pointed out to the Airport Officer by their letter dated 22nd February, 1977 that they had, in addition to what was set out in their earlier letter dated 24th January, 1977, experience of running canteens for Phillips India Ltd. and Indian Oil Corporation and moreover, they held Eating House Licence granted by the Bombay Municipal Corporation since 1973 and had thus experience of 10 years in the catering line. It appears that before this letter of the 4th respondents could reach the Airport Officer, another letter dated 22nd February, 1977 was addressed by the Airport Officer once again requesting the 4th respondents to produce documentary evidence to show if they were "a registered IInd Class Hotelier having at least 5 years' experience". The 4th respondents thereupon addressed another letter dated 26th February, 1977 to the Director pointing out that they had considerable experience of catering for various reputed commercial houses, clubs, messes and banks and they also held an Eating House Catering Establishment (Canteen) Licence as also a licence issued under the Prevention of Food Adulteration Act. The 4th respondents stated that their sole proprietor Kumaria had started his career in catering line in the year 1962 at Hotel Janpath, Delhi and gradually risen to his present position and that he had accordingly "experience equivalent to that of a IInd Class or even 1st Class hotelier." This position was reiterated by the 4th respondents in a further letter dated 3rd March, 1977 addressed to the Director. This information given by the 4th respondents appeared to satisfy the 1st respondent and by a letter dated 19th April, 1977 the 1st respondent accepted the tender of the 4th respondents on the terms and conditions set out in that letter. The 4th respondents accepted these terms and conditions by their letter dated 23 April, 1977 and deposited with the 1st respondent by way of security a sum of Rs. 39,999.96 in the form of Fixed Deposit Receipts in favour of the 1st respondent and paid to the 1st respondent a sum of Rs. 6666.66 representing licence fee for one month and other amounts representing water, electricity and conservancy charges. The 4th respondents thereafter executed and handed over to the 1st respondent an agreement in the form attached to the tender on 1st May, 1977. The 4th respondents also got prepared furniture, counters and show cases as also uniforms for the staff, purchased inter alia deep freezers, water coolers, electrical appliances, icecream cabinets, expresso coffee machines, crockery, cutlery and other articles and things and also engaged the necessary staff for the purpose of running the restaurant and the two snack bars. But the 1st respondent could not hand over possession of the requisite sites to the 4th respondents, since A. S. Irani was running his restaurant and snack bars on these sites under a previous contract with the 1st respondent and though that contract had come to an end, A. S. Irani did not deliver possession of these sites to the 1st respondent. The 4th respondents repeatedly requested the 1st respondent and the Airport Director who is the 2nd respondent in the appeal, to hand over possession of the sites and pointed out to them that the 4th respondents were incurring losses by reason of delay in delivery of possession, but on account of the intransigence of A. S. Irani the 1st respondent could not arrange to hand over possession of the sites to the 4th respondents.

3. Meanwhile one K. S. Irani who owned Cafe Excelsior filed Suit No. 6544 of 1977 in the City Civil Court, Bombay against the respondents challenging the decision of the 1st respondent to accept the tender of the 4th respondents and took out a notice of motion for restraining the 1st respondent from taking any further steps pursuant to the acceptance of the tender. K. S. Irani obtained an ad interim injunction against the respondents but after hearing the respondents, the City Civil Court vacated the ad interim injunction and dismissed the notice of motion by an order dated 10th October, 1977. An appeal was preferred by K. S. Irani against this order, but the appeal

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was dismissed by the High Court on 19th October, 1977. Immediately thereafter, on the same day, the 1st respondent handed over possession of two sites to the 4th respondents and the 4th respondents proceeded to set

up snack bars on the two sites and started business of catering at the two snack bars. These two sites handed over to the 4th respondent were different from the sites occupied by A. S. Irani, because A. S. Irani refused to vacate the sites in his occupation. So far as the site for the restaurant was concerned, the 1st respondent could not hand over possession of it to the 4th respondents presumably because there was no other appropriate site available other than the one occupied by A. S. Irani. Since A. S. Irani refused to hand over possession of the sites occupied by him to the 1st respondent, even though his contract had come to an end, and continued to carry on the business of running the restaurant and the snack bars on these sites, the 1st respondent was constrained to file suit No. 8032 of 1977 against A. S. Irani in the City Civil Court at Bombay and in that suit, an injunction was obtained by the 1st respondent restraining A. S. Irani from running or conducting the restaurant and the snack bars or from entering the premises save and except for winding up the restaurant and the snack bars. A. S. Irani preferred an appeal against the order granting the injunction, but the appeal was rejected and ultimately a petition for special leave to appeal to this Court was also turned down on 31st July, 1978.

4. This was, however, not to be the end of the travails of the 4th respondent, for, as soon as the appeal preferred by K. S. Irani against the order dismissing his notice of motion was rejected by the High Court on 19th October, 1977, A. S. Irani filed another suit being suit No. 8161 of 1977 in the City Civil Court, Bombay on 24th October, 1977 seeking mandatory injunction for removal of the two snack bars put up by the 4th respondent. This was one more attempt by A. S. Irani to prevent the 4th respondents from obtaining the benefit of the contract awarded to them by the 1st respondent. He, however, did not succeed in obtaining an interim injunction and we are told that the notice of motion taken out by him is still pending in the City Civil Court.

5. It will thus be seen that A. S. Irani failed in his attempts to prevent the 4th respondents from obtaining the contract and enjoying its benefit. The 4th respondents put up two snack bars on the sites provided by the 1st respondent and started running the two snack bars from 19th October, 1977. The restaurant however, could not be put up on account of the inability of the 1st respondent to provide appropriate site to the 4th respondents and, therefore, the licence fee for the two snack bars had to be settled and it was fixed at Rs. 4,500/- per month by mutual agreement between the parties. But it seems that the 4th respondents were not destined to be left in peace to run the two snack bars and soon after the dismissal of the appeal of A. S. Irani on 19th October, 1977 and the failure of A. S. Irani to obtain an ad interim mandatory injunction in the suit filed by him against the 1st and the 4th respondents, the appellant filed writ petition No. 1582 of 1977 in the High Court of Bombay challenging the decision of the 1st respondent to accept the tender of the 4th respondents. The writ petition was moved before a Single Judge of the High Court on 8th November, 1977 after giving prior notice to the respondents and after hearing the parties, the learned Single Judge summarily rejected the writ petition. The appellant preferred an appeal to the Division Bench of the High Court against the order rejecting the writ petition and on notice being issued by the Division Bench, the 1st and the 4th respondents filed their respective affidavits in reply showing cause against the admission of the appeal. The Division Bench after considering the affidavits and hearing the parties rejected the appeal in limine on 21st February, 1978. The appellant thereupon filed a petition for special leave to appeal to this Court and since it was felt that the questions raised in the appeal were of seminal importance, this Court granted special leave and decided to hear the appeal at an early date after giving a further opportunity to the parties to file their respective affidavits, that is how the appeal has now come before us for final hearing with full and adequate material placed before us on behalf of both the parties.

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6. The main contention urged on behalf of the appellant was that in paragraph (1) of the notice inviting tenders the 1st respondent had stipulated a condition of eligibility by providing that a person submitting a tender must be a "registered IInd class Hotelier having at least 5 years' experience." This was a condition of eligibility to be satisfied by every person submitting a tender and if in case of any person, this condition was not satisfied, his tender was ineligible for being considered. The 1st respondent, being a State within the meaning of Article 12 of the Constitution or in any event a public authority, was bound to give effect to the condition of eligibility set up by it and was not entitled to depart from it at its own sweet will without rational justification. The 4th respondents had experience of catering only in canteens and did not have 5 years' experience of running a IInd class hotel or restaurant and hence they did not satisfy the condition of eligibility and yet the 1st respondent



accepted the tender submitted by them. This was clearly in violation of the standard or norm of eligibility set up by the 1st respondent and the action of the 1st respondent in accepting the tender of the 4th respondents was clearly invalid. Such a departure from the standard or norm of eligibility had the effect of denying equal opportunity to the appellant and others of submitting their tenders and being considered for entering into contract for putting up and running the restaurant and two snack bars. The appellant too was not a registered IInd class hotelier with 5 years' experience and was in the same position as the 4th respondent vis-a-vis this condition of eligibility and he also could have submitted his tender and entered the field of consideration for award of the contract, but he did not do so because of this condition of eligibility which he admittedly did not satisfy. The action of the 1st respondent in accepting the tender of the 4th respondents had, therefore, the effect of denying him equality of opportunity in the matter of consideration for award of the contract and hence it was unconstitutional as being in violation of the equality clause. This contention of the appellant was sought to be met by a threefold argument on behalf of the 1st and the 4th respondents. The first head of the argument was that grading is given by the Bombay City Municipal Corporation only to hotels or restaurants and not persons running them and hence there can be a IInd grade hotel or restaurant but not a IInd grade hotelier and the requirement in paragraph (1) of the notice that a tenderer must be a registered IInd grade hotelier was therefore a meaningless requirement and it could not be regarded as laying down any condition of eligibility. It was also urged that in any event what paragraph (i) of the notice required was not that a person tendering must have 5 years' experience of running a IInd grade hotel, but he should have sufficient experience to be able to run a IInd grade hotel and the 4th respondents were fully qualified in this respect since they had over 10 years' experience in catering to canteens of well known companies, clubs and banks. It was further contended in the alternative that paragraph (8) of the notice clearly provided that the acceptance of the tender would rest with the Airport Director who did not bind himself to accept any tender and reserved to himself the right to reject all or any of the tenders without assigning any reasons therefor and it was, therefore, competent to the 1st respondent to reject all the tenders and to negotiate with any person it considered fit to enter into a contract and this is in effect and substance what the 1st respondent did when he accepted the tender of the 4th respondents. The Second head of argument was that paragraph (1) of the notice setting out the condition of eligibility had no statutory force nor was it issued under any administrative rules and, therefore, even if there was any departure from the standard of norm of eligibility set out in that paragraph, it was not justiciable and did not furnish any cause of action to the appellant. It was competent to the 1st respondent to give the contract to any one it thought fit and it was not bound by the standard or norm of eligibility set out in paragraph (1) of the notice. It was submitted that in any event the appellant had no right to complain that the 1st respondent had given the contract to the 4th respondents in breach of the condition of eligibility laid down in paragraph (1) of the notice. And lastly, under the third head of argument, it was submitted

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on behalf of the 1st and the 4th respondents that in any view of the matter, the writ petition of the appellant was liable to be rejected in the exercise of its discretion by the Court, since the appellant had no real interest but was merely a nominee of A. S. Irani who had been putting up one person after another to start litigation with a view to preventing the award of the contract to the 4th respondents. The appellant was also guilty of laches and delay in filing the writ petition and the High Court was justified in rejecting the writ petition in limine particularly in view of the fact that during the period between the date of acceptance of the tender and the date of filing of the writ petition, the 4th respondents had spent an aggregate sum of about Rs. 1,25,000/- in making arrangements for putting up the restaurant and two snack bars. These were the rival contentions urged on behalf of the parties and we shall now proceed to discuss them in the order in which we have set them out.

7. Now it is clear from paragraph (1) of the notice that tenders were invited only from "registered IInd Class hoteliers having at least 5 years' experience". It is only if a person was a registered IInd Class hotelier having at least 5 years' experience that he could, on the terms of paragraph (1) of the notice, submit a tender. Paragraph (1) of the notice prescribed a condition of eligibility which had to be satisfied by every person submitting a tender and if, in a given case, a person submitting a tender did not satisfy this condition, his tender was not eligible to be considered. Now it is true that the terms and conditions of the tender form did not prescribe that the tenderer must be a registered IInd Class hotelier having at least 5 years' experience nor was any such stipulation to be

found in the form of the agreement annexed to the tender but the notice inviting tenders published in the newspapers clearly stipulated that tenders may be submitted only by registered IInd Class hoteliers having at least 5 years' experience and this tender notice was also included amongst the documents handed over to prospective tenderers when they applied for tender forms. Now the question is, what is the meaning of the expression "registered IInd Class hotelier", what category of persons fall within the meaning of this description? This is a necessary enquiry in order to determine whether the 4th respondents were eligible to submit a tender. It is clear from the affidavits and indeed there was no dispute about it that different grades are given by the Bombay City Municipal Corporation to hotels and restaurants and, therefore, there may be a registered IInd Class Hotel but no such grades are given to persons running hotels and restaurants and hence it would be inappropriate to speak of a person as a registered IInd Class hotelier. But on that account would it be right to reject the expression "registered IInd Class hotelier" as meaningless and deprive paragraph (1) of the notice of any meaning and effect. We do not think such a view would be justified by any canon of construction. It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The Court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable. Now, here the expression used in paragraph (1) of the notice was "registered IInd Class hotelier" and there can be no doubt that by using this expression the 1st respondent intended to delineate a certain category of persons who alone should be eligible to submit a tender. The 1st respondent was not acting aimlessly or insensibly in insisting upon this requirement nor was it indulging in a meaningless and futile exercise. It had a definite purpose in view when it laid down this condition of eligibility in paragraph (1) of the notice. It is true that the phraseology used by the 1st respondent to express its intention was rather inapt but it is obvious from the context that the expression "registered IInd Class hotelier" was loosely used

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to denote a person conducting or running a IInd Class hotel or restaurant. It may be ungrammatical but it does not offend common sense to describe a person running a registered IInd grade hotelier. This meaning is quite reasonable and does not do any violence to the language and makes sense of the provision contained in paragraph (1) of the notice. We must, in the circumstances, hold that, on a proper construction, what paragraph (1) of the notice required was that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to submit a tender. This was a condition of eligibility and it is difficult to see how this condition could be said to be satisfied by any person who did not have five years' experience of running a IInd Class hotel or restaurant. The test of eligibility laid down was an objective test and not a subjective one. What the condition of eligibility required was that the person submitting a tender must have 5 years' experience of running a IInd Class hotel, as this would ensure by an objective test that he was capable of running a IInd Class restaurant and it should not be left to the 1st respondent to decide in its subjective discretion that the person tendering was capable of running such a restaurant. If, therefore, a person submitting a tender did not have at least 5 years' experience of running a IInd Class hotel, he was not eligible to submit the tender and it would not avail him to say that though he did not satisfy this condition, he was otherwise capable of running a IInd Class restaurant and should, therefore, be considered. This was in fact how the 1st respondent itself understood this condition of eligibility, when the 4th respondents submitted their tender along with their letter dated 24th January, 1977 and it appeared from the documents submitted by the 4th respondents, that they did not have 5 years' experience of running a IInd Class restaurant. The 1st respondent by its letter dated 15th February, 1977 required the 4th respondents to produce documentary evidence to show that they were "registered IInd Class hotelier having at least 5 years' experience." The 1st respondent did not regard this requirement of eligibility as meaningless or unnecessary and wanted to be satisfied that the 4th respondents did fulfil this requirement. Now, unfortunately for the 4th respondents, they had over 10 years' experience of running canteens but at the date when they submitted their tender, they were not running a II grade hotel or restaurant nor did they



have 5 years' experience of running such a hotel or restaurant. Even if the experience of the 4th respondents in the catering line were taken into account from 1962 onwards, it would not cover a total period of more than 4 years 2 months so far as catering experience in IInd Grade hotels and restaurants is concerned. The 4th respondents thus did not satisfy the condition of eligibility laid down in paragraph (1) of the notice and in fact this was impliedly conceded by the 4th respondents in their letter dated 26th February, 1977 where they stated that they had "experience equivalent to that of a IInd Class or even Ist Class hotelier." The 4th respondents were, accordingly, not eligible for submitting a tender and the action of the Ist respondent in accepting their tender was in contravention of paragraph (1) of the notice.

8. It was suggested on behalf of the Ist and the 4th respondents that there was nothing wrong in the Ist respondent giving the contract to the 4th respondents since it was competent to the Ist respondent to reject all the tenders received by it and to negotiate directly with the 4th respondents for giving them the contract and it made no difference that instead of following this procedure, which perhaps might have resulted in the 4th respondents offering a smaller licence fee and the Ist respondent suffering a loss in the process, the Ist respondent accepted the tender of the 4th respondents. We do not think there is any force in this argument. It is true that there was no statutory or administrative rule requiring the Ist respondent to give a contract only by inviting tenders and hence the Ist respondent was entitled to reject all the tenders and, subject to the constitutional norm laid down in Article 14, negotiate directly for entering into a contract. Paragraph (8) of the notice also made it clear that the Ist respondent was not bound to accept any tender and could reject all the tenders received by it. But here the Ist respondent did not reject the tenders outright

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and enter into direct negotiations with the 4th respondents for awarding the contract. The process of awarding a contract by inviting tenders was not terminated or abandoned by the Ist respondent by rejecting all the tenders but in furtherance of the process, the tender of the 4th respondents was accepted by the Ist respondent. The contract was not given to the 4th respondents as a result of direct negotiations. Tenders were invited and out of the tenders received, the one submitted by the 4th respondents was accepted and the contract was given to them. It is, therefore, not possible to justify the action of the Ist respondent on the ground that the Ist respondent could have achieved the same result by rejecting all the tenders and entering into direct negotiations with the 4th respondents.

9. That takes us to the next question whether the acceptance of the tender of the 4th respondents was invalid and liable to be set aside at the instance of the appellant. It was contended on behalf of the Ist and the 4th respondents that the appellant had no locus standi to maintain the writ petition since no tender was submitted by him and he was a mere stranger. The argument was that if the appellant did not enter the field of competition by submitting a tender, what did it matter to him whose tender was accepted; what grievance could he have if the tender of the 4th respondents was wrongly accepted. A person whose tender was rejected might very well complain that the tender of someone else was wrongly accepted, but, it was submitted, how could a person who never tendered and who was at no time in the field, put forward such a complaint? This argument, in our opinion, is misconceived and cannot be sustained for a moment. The grievance of the appellant, it may be noted, was not that his tender was rejected as a result of improper acceptance of the tender of the 4th respondents, but that he was differentially treated and denied equality of opportunity with the 4th respondents in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of a tender, he also would have submitted a tender and competed for obtaining a contract. But he was precluded from submitting a tender and entering the field of consideration by reason of the condition of eligibility, while so far as the 4th respondents were concerned, their tender was entertained and accepted even though they did not satisfy the condition of eligibility and this resulted in inequality of treatment which was constitutionally impermissible. This was the grievance made by the appellant in the writ petition and there can be no doubt that if this grievance were well founded, the appellant would be entitled to maintain the writ petition. The question is whether this grievance was justified in law and the acceptance of the tender of the 4th respondents was vitiated by any legal infirmity.

10. Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which

was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 : 3 L Ed 2d 1012 where the learned Judge said :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

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This Court accepted the rule as valid and applicable in India in *A. S. Ahluwalia v. State of Punjab* (1975) 3 SCR 82 : (AIR 1975 SC 984) and in subsequent decision given in *Sukhdev v. Bhagatram*, (1975) 3 SCR 619 : (AIR 1975 SC 1331), Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanating from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's *Administrative Law* 4th Edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set forth by Herry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in *Democracy, Equality and Freedom* "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.

11. To-day the Government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again,



thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining, and other purposes. These resources are available for utilisation by

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private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining / structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised." The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual.

12. We agree with the observations of Mathew, J., in *V. Punnath Thomas v. State of Kerala* AIR 1969 Ker 81 (FB) that: "The Government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal". The same point was made by this Court in *Erusian Equipment and Chemicals Ltd. v. State of West Bengal* (1975) 2 SCR 674 : (AIR 1975 SC 266) where the question was whether black-listing of a person without giving him an opportunity to be heard was bad? Ray, C. J., speaking on behalf of himself and his colleagues on the Bench pointed out that black-listing of a person not only affects his reputation which is in Poundian terms an interest both of personality and substance, but also denies him equality in the matter of entering into contract with the Government and it cannot, therefore, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering

into contracts or issuing

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quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

13. Now, it is obvious that the Government which represents the executive authority of the State, may act through the instrumentality, or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often or specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government. As early as 1819 the Supreme Court of the United States in *Mac Culloch v. Maryland*, (1816-19) 4 Wheat 316 held that the Congress has power to charter corporations as incidental to or in aid of governmental functions and, as pointed out by Mathew, J., in *Sukhdev v. Bhagat Ram*, (1975) 3 SCR 619 : (AIR 1975 SC 1331), such federal corporations would ex-hypothesi be agencies of the Government. In Great Britain too, the policy of public administration through separate corporations was gradually evolved and the conduct of basic industries through giant corporations has now become a permanent feature of public life. So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this". It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial Policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel, but the instrumentality or agency of the corporations was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations. But the question is how to determine whether a corporation is acting as instrumentality or agency of Government. It is a question not entirely free from difficulty.

14. A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act 1956 or the Societies Registration Act 1860. Where a Corporation is wholly controlled by Government not only in its policy making but also in

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carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation



is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government. It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.

15. The analogy of the concept of State action as developed in the United States may not, however, be altogether out of place while considering this question. The decisions of the Courts in the United States seem to suggest that a private agency, if supported by extraordinary assistance given by the State, may be subject to the same constitutional limitations as the State. Of course, it may be pointed out that "the State's general common law and statutory structure under which its people carry on their private affairs, own property and contract, each enjoying equality in terms of legal capacity, is not such State assistance as would transform private conduct into State action. But if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government. The leading case on the subject in the United States is *Kerr v. Eneck Pratt Free Library*, 149 F 2d 212. The Library system in question in this case was established by private donation in 1882, but by 1944, 99 per cent of the system's budget was supplied by the city, title to the library property was held by the city, employees were paid by the city payroll officer and a high degree of budget control was exercised or available to the city government. On these facts the Court of Appeal required the trustees managing the system to abandon a discriminatory admission policy for its library training courses. It will be seen that in this case there was considerable amount of State control of the library system in addition to extensive financial assistance and it is difficult to say whether, in the absence of such control, it would have been possible to say that the action of the trustees constituted State action. Thomas P. Lewis has expressed the opinion in his article on 'The meaning of State Action' (60 Columbia Law Review 1083) that in this case "it is extremely unlikely that absence of public control would have changed the result as long as 99% of the budget of a nominally private institution was provided by government. Such extensive governmental support should be

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sufficient identification with the Government to subject the institution to the provisions of the Fourteenth Amendment". It may, therefore, be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. But where financial assistance is not so extensive, it may not by itself, without anything more, render the corporation an instrumentality or agency of government, for there are many private institutions which are in receipt of financial assistance from the State and merely on that account, they cannot be classified as State agencies. Equally a mere finding of some control by the State would not be determinative of the question "since a State has considerable measure of control under its police power over all types of business operations". But 'a finding of State financial support plus an unusual degree of control over the

management and policies might lead one to characterise an operation as State action'. Vide *Sukhdev v. Bhagatram*, (1975) 3 SCR 619 at p. 658 : (AIR 1975 SC 1331 at pp. 1359, 1360). So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporations' ties to the State. Vide the observations of Douglas, J., in *Catherine Jackson v. Metropolitan Edison Co.*, (1974) 419 US 345 : 42 L Ed 2d 477.

16. There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Millar: "The Constitutional Law of the 'Security State'" (10 *Stanford Law Review* 620 at p. 664). It was pointed out by Douglas, J., in *E. S. Evans v. Charles E. Newton* (1966) 382 US 296 : 15 L Ed 2d 373 that "when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State." Of course, with the growth of the welfare State, it is very difficult to define what functions are governmental and what are not, because, as pointed out by Villmer, L.J., in *Pfizer v. Ministry of Health*, (1964) 1 Ch 614, there has been, since mid-Victorian times, "a revolution in political thought and a totally different conception prevails today as to what is and what is not within the functions of Government". Douglas, J., also observed to the same effect in *New York v. United States*, (1945) 326 US 572 : "A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit". Cf. *Helvering v. Gerhardt*, (1937) 304 US 405, 426, 427. A State may deem it as essential to its economy that it owns and operate a railroad, a mill, or an irrigation system as it does to own and operate bridges, street lights, or a sewage disposal plant. What might have been viewed in an earlier day as an improvident or even dangerous extension of state activities may today be deemed indispensable. It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This precisely what was pointed out by Mathew, J., in *Sukhdev v. Bhagatram* (AIR 1975 SC 1331) (*supra*) where the learned Judge said that 'institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions.'

17. This was one of the principal tests applied by the United States Supreme Court in *Marsh v. Alabama*, (1945) 326 US 501 : 90 L Ed 265 for

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holding that a corporation which owned a Company town was subject to the same constitutional limitations as the State. This case involved the prosecution of Marsh, a member of the Johevah's witnesses sect, under a state trespass statute for refusing to leave the side walk of the company town where she was distributing her religious pamphlets. She was fined \$ 5/- and aggrieved by her conviction she carried the matter right up to the Supreme Court contending successfully that by reason of the action of the corporation here religious liberty had been denied. The Supreme Court held that administration of private property such as a town, though privately carried on, was, nevertheless, in the nature of a public function and that the private rights of the corporation must therefore, be exercised within constitutional limitations and the conviction for trespass was reversed. The dominant theme of the majority opinion written by Mr. Justice Black was that the property of the corporation used as a town not recognisably different from other towns, lost its identification as purely private property. It was said that a town may be privately owned and managed but that does not necessarily allow the corporation to treat it as if it was wholly in the private sector and the exercise of constitutionally protected rights on the public street of a company town could not be denied by the owner. 'The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and



constitutional rights of those who use it..... Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a farmer does his farm. Since these facilities are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to state regulation'. Mr. Justice Frankfurter, concurring, reduced the case to simpler terms. He found in the realm of civil liberties the need to treat a town, private or not, as a town. The function exercised by the corporation was in the nature of municipal function and it was, therefore, subject to the constitutional limitations placed upon State action.

18. We find that the same test of public or governmental character of the function was applied by the Supreme Court of the United States in *Evans v. Newton* (1966) 382 US 296 (supra) and *Smith v. Allwright* (1943) 321 US 649. But the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. (Mathew, J., in *Sukhdev v. Bhagatram* (supra) at p. 652) (of 1975-3 SCR) : (at p. 1355 of AIR 1975 SC). But the public nature of the function, if impregnated with governmental character or 'tied or entwined with Government' or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference.

19. It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government. We have referred to some of these factors and they may be summarised as under : whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys Stateconferred

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conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions. This particularisation of relevant factors is however not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency. Moreover even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. "The dispositive question in any State action case", as pointed out by Douglas, J., in *Jackson v. Metropolitan Edison Co.* (1974-419 US 345) (supra) 'is not whether any single fact or relationship presents a sufficient degree of State involvement, but rather whether the aggregate of all relevant factors compels a finding of State responsibility.' It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding to that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such

corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in E. P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555) and Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (AIR 1978 SC 597) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory : it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C. J., in Erusian Equipment and Chemicals Ltd. v. State of West Bengal (AIR 1975 SC 266) (supra) where the learned Chief Justice pointed out that 'the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing -A citizen has

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a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling - It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods.' It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

22. It is interesting to find that this rule was recognised and applied by a Constitution Bench of this Court in a case of sale of kendu leaves by the Government of Orissa in Rasbihari Panda v. State of Orissa, (1969) 3 SCR 374 : (AIR 1969 SC 1081). The trade of kendu leaves in the State of Orissa was regulated by the Orissa Kendu Leaves (Control of Trade) Act, 1961 and this Act created a monopoly in favour of the State so far as purchase of kendu leaves from growers and pluckers was concerned. Section 10 of the Act authorised the Government to sell or otherwise dispose of kendu leaves purchased in such manner as the Government might direct. The Government first evolved a scheme under which it offered to renew the licences of those traders who in its view had worked satisfactorily in the previous year and had regularly paid the amounts due from them. The scheme was challenged and realising that it might be struck down, the Government withdrew the scheme and instead, decided to invite tenders for advance purchases of kendu leaves but restricted the invitation to those individuals who had carried out contracts in the previous year without default and to the satisfaction of the Government. This method of sale of kendu leaves was also challenged by filing a writ petition on the ground inter alia that it was violative of Articles 14 and 19 (1) (g) and this challenge, though negatived by the High Court, was upheld by this Court in appeal. The Court pointed out that the original scheme of offering to enter into contracts with the old licencees and to renew their terms was open to grave objection, since it sought arbitrarily to exclude



many persons interested in the trade and the new scheme under which the Government restricted the invitation to make offers to those traders who had carried out their contracts in the previous year without default and to the satisfaction of the Government was also objectionable, since the right to make tenders for the purchase of kendu leaves being restricted to a limited class of persons, it effectively shut out all other persons carrying on trade in kendu leaves and also the new entrants into that business and hence it was ex facie discriminatory and imposed unreasonable restrictions upon the right of persons other than the existing contractors to carry on business. Both the schemes evolved by the Government were thus held to be violative of Articles 14 and 19 (1) (g) because they 'gave rise to a monopoly in the trade in kendu leaves to certain traders and singled out other traders for discriminatory treatment'. The argument that existing contractors who had carried out their obligations in the previous year regularly and to the satisfaction of the Government formed a valid basis of classification bearing a just and reasonable relation to the object sought to be achieved by the sale, namely, effective execution of the monopoly in the public interest, was also negatived and it was pointed out that : "exclusion of all persons interested in the trade, who were not in the previous year licencees, is ex facie arbitrary : it had no direct relation to the object of preventing exploitation of pluckers and growers of kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State." The Court referred to the offer made by a well known manufacturer of bidis for purchase of the entire crop of kendu leaves for a sum of Rs. 3 crores which was turned down by the Government and expressed its surprise that no explanation was attempted to be given on behalf of the State as to why such an offer, from which the State stood to

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gain more than Rs. 1 crore, was rejected by the Government. It will be seen from this judgment that restricting the invitation to submit tenders to a limited class of persons was held to be violative of the equality clause, because the classification did not bear any just and reasonable relation to the object sought to be achieved, namely, selling of kendu leaves in the interest of the general public. The standard or norm laid down by the Government for entering into contracts of sale of kendu leaves with third parties was discriminatory and could not stand the scrutiny of Article 14 and hence the scheme was held to be invalid. The Court rejected the contention of the Government that by reason of Section 10 it was entitled to dispose of kendu leaves in such manner as it thought fit and there was no limitation upon its power to enter into contracts for sale of kendu leaves with such persons it liked. The Court held that the Government was, in the exercise of its power to enter into contracts for sale of kendu leaves, subject to the constitutional limitation of Article 14 and it could not act arbitrarily in selecting persons with whom to enter into contracts and discriminate against others similarly situate. The Court criticised the Government for not giving any explanation as to why an offer for a large amount was not accepted, the clearest implication being that the Government must act in the public interest; it cannot act arbitrarily and without reason and if it does so, its action would be liable to be invalidated. This decision wholly supports the view we are taking in regard to the applicability of the rule against arbitrariness in State action.

23. We may also in this connection refer to the decision of this Court in *C. K. Achutan v. State of Kerala*, (1959) Supp (1) SCR 787 : (AIR 1959 SC 490) where Hidayatullah, J., speaking on behalf of the Court made certain observation which was strongly relied upon on behalf of the respondents. The facts of this case were that the petitioner and the 3rd respondent Co-operative Milk Supply Union, Cannanore, submitted tenders for the supply of milk to the Government hospital at Cannanore for the year 1948-49. The Superintendent who scrutinised the tenders accepted that of the petitioner and communicated the reasons for the decision to the Director of Public Health. The resulting contract in favour of the petitioner was, however, subsequently cancelled by issuing a notice in terms of clause (2) of the tender, in pursuance of the policy of the Government that in the matter of supply to Government Medical Institutions the Co-operative Milk Supply Union should be given contract on the basis of prices fixed by the Revenue Department. The petitioner challenged the decision of the Government in a petition under Article 32 of the Constitution on the ground inter alia that there had been discrimination against him vis-a-vis the 3rd respondent and as such, there was contravention of Article 14 of the Constitution. The Constitution Bench rejected this contention of the petitioner and while doing so, Hidayatullah, J. made the following observation : "There is no discrimination, because it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfil contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Article 14, because

the choice of the person to fulfil a particular contract must be left to the Government". The respondents relied very strongly on this observation in support of their contention that it is open to the 'State' to enter into contract with any one it likes and choosing one person in preference to another for entering into a contract does not involve violation of Article 14. Though the language in which this observation is couched is rather wide, we do not think that in making this observation, the Court intended to lay down any absolute proposition permitting the State to act arbitrarily in the matter of entering into contract with third parties. We have no doubt that the Court could not have intended to lay down such a proposition because Hidayatullah, J. who delivered the judgment of the Court in this case was also a party to the judgment in *Rasbihari Panda v. State of Orissa* (AIR 1969 SC 1081) (supra) which was also a decision of the Constitution Bench, where it was held in so many terms that the State cannot act arbitrarily in selecting persons with whom to enter into contracts. Obviously what Court meant to say was that merely because one person is chosen in preference to another,

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it does not follow that there is a violation of Article 14, because the Government must necessarily be entitled to make a choice. But that does not mean that the choice be arbitrary or fanciful. The choice must be dictated by public interest and must not be unreasoned or unprincipled.

24. The respondents also relied on the decision of this Court in *Trilochan Mishra v. State of Orissa*, (1971) 3 SCC 153 : (AIR 1971 SC 733). The complaint of the petitioner in that case was that the bids of persons making the highest tenders were not accepted and persons who had made lesser bids were asked to raise their bids to the highest offered and their revised bids were accepted. The Constitution Bench negated this complaint and speaking through Mitter, J., observed (at p. 739 of AIR):-

"With regard to the grievance that in some cases the bids of persons making the highest tenders were not accepted, the facts are that persons who had made lower bids were asked to raise their bids to the highest offered before the same were accepted. Thus there was not loss to Government and merely because the Government preferred one tender to another no complaint can be entertained. Government certainly has a right to enter into a contract with a person well known to it and specially one who has faithfully performed his contracts in the past in preference to an undesirable or unsuitable or untried person. Moreover, Government is not bound to accept the highest tender but may accept a lower one in case it thinks that the person offering the lower tender is on an overall consideration to be preferred to the higher tenderer."

We fail to see how this observation can help the contention of the respondents. It does not say that the Government can enter into contract with any one it likes arbitrarily and without reason. On the contrary, it postulates that the Government may reject a higher tender and accept a lower one only when there is valid reason to do so, as for example, where it is satisfied that the person offering the lower tender is on an overall consideration preferable to the higher tenderer. There must be some relevant reason for preferring one tenderer to another, and if there is, the Government can certainly enter into contract with the former even though his tender may be lower but it cannot do so arbitrarily or for extraneous reasons.

25. There was also one other decision of this Court in *State of Orissa v. Harinarayan Jaiswal* (1972) 2 SCC 36 : (AIR 1972 SC 1816). Which was strongly relied upon on behalf of the respondents. There the respondents were the highest bidders at an auction held by the Orissa Government through the Excise Commissioner for the exclusive privilege of selling by retail country liquor in some shops. The auction was held pursuant to an order dated 6th January, 1971 issued by the Government of Orissa in exercise of the power conferred under Section 29 (2) of the Bihar and Orissa Excise Act, 1915 and clause (6) of this Order provided that "no sale shall be deemed to be final unless confirmed by the State Government who shall be at liberty to accept or reject any bid without assigning any reason therefor." The Government of Orissa did not accept any of the bids made at the auction and subsequently sold the privilege by negotiations with some other parties. One of the contentions raised on behalf of the petitioners in that case was that the power retained by the Government "to accept or reject any bid without any reason therefor" was an arbitrary power violative of Articles 14 and 19 (1) (g). This contention was negated and Hegde, J., speaking on behalf of the Court observed (at p. 1822 of AIR):

"The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting, a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19 (1) (g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privilege set out in Section 22 was not denied. It was also not disputed that these privileges could be sold by public auction. Public auctions are

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held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner or the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate."

It will be seen from these observations that the validity of clause (6) of the Order dated 6th January, 1971 was upheld by this Court on the ground that having regard to the object of holding the auction, namely, to raise revenue, the Government was entitled to reject even the highest bid, if it thought that the price offered was inadequate. The Government was not bound to accept the tender of the person who offered the highest amount and if the Government rejected all the bids made at the auction, it did not involve any violation of Article 14 or 19 (1) (g). This is a self-evident proposition and we do not see how it can be of any assistance to the respondents.

26. The last decision to which reference was made on behalf of the respondents was the decision in *P. R. Quenim v. M. K. Tandel* (1974) 3 SCR 64 : (AIR 1974 SC 651). This decision merely reiterates the principle laid down in the earlier decisions in *Trilochan Mishra v. State of Orissa* (AIR 1971 SC 733) (supra) and *State of Orissa v. Harinarayan Jaiswal* (AIR 1972 SC 1816) (supra) and points out that a condition that the Government shall be at liberty to accept or reject any bid without assigning any reason therefor is not violative of Article 14 and that 'in matters relating to contracts with the Government, the latter is not bound to accept the tender of the person who offers the highest amount.' Nowhere does it say that such a condition permits the Government to act arbitrarily in accepting a tender or that under the guise or pretext of such a condition, the Government may enter into a contract with any person it likes, arbitrarily and without reason. In fact the Court pointed out at the end of the judgment that the act of the Government was not 'shown to be vitiated by such arbitrariness as should call for interference by the Court', recognising clearly that if the rejection of the tender of the 1st respondent were arbitrary, the Court would have been justified in striking it down as invalid.

27. Now this rule, flowing as it does from Article 14, applies to every State action and since 'State' is defined in Article 12 to include not only the Government of India and the Government of each of the States, but also 'all local or other authorities within the territory of India or under the control of the Government of India', it must apply to action of 'other authorities' and they must be held subject to the same constitutional limitation as the Government. But the question arises, what are the 'other authorities' contemplated by Article 12 which fall within the definition of 'State'? On this question considerable light is thrown by the decision of this Court in *Rajasthan Electricity Board v. Mohan Lal*, (1967) 3 SCR 377 : (AIR 1967 SC 1857). That was a case in which this Court was called upon to consider whether the Rajasthan Electricity Board was an 'authority' within the meaning of the expression 'other authorities' in Art. 12. Bhargava, J., delivering the judgment of the majority pointed out that the expression 'other authorities' in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions the disobedience of which would be punishable as a criminal offence, that would be an indication that that authority is 'State'. Shah, J., who delivered a separate judgment, agreeing with the conclusion reached by the majority, preferred to give a slightly different meaning to the expression 'other authorities'. He said that authorities, constitutional or statutory, would fall within the expression 'other authorities' only if they are invested with the sovereign power of the State, namely, the power to make rules and regulations which have the force of law. The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the meaning of the expression 'other authorities', if it has been invested with statutory power to issue



binding directions to third parties, the disobedience of which would entail penal consequence or it has the sovereign power to make rules and regulations having the force of law. This test was followed by Ray, C. J., in *Sukhdev v. Bhagat Ram* (AIR 1975 SC 1331) (supra).

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Mathew, J., however, in the same case, propounded a broader test, namely, whether the statutory corporation or other body or authority, claimed to fall within the definition of 'State', is an instrumentality or agency of Government : if it is, it would fall within the meaning of the expression 'other authorities' and would be 'State'. Whilst accepting the test laid down in *Rajasthan Electricity Board v. Mohan Lal* (AIR 1967 SC 1857) (supra), and followed by Ray, C. J. in *Sukhdev v. Bhagat Ram* (supra), we would, for reasons already discussed, prefer to adopt the test of governmental instrumentality or agency as one more test and perhaps a more satisfactory one for determining whether a statutory corporation, body or other authority falls within the definition of 'State'. If a statutory corporation, body or other authority is an instrumentality or agency of Government, it would be an 'authority' and therefore 'State' within the meaning of that expression in Article 12.

28. It is necessary at this stage to refer to a few decisions of this Court which seem to bear on this point and which require a little explanation. The first is the decision in *Praga Tool Corporation v. C. V. Imanuel*, (1969) 3 SCR 773 : (AIR 1969 SC 1306). This was a case in which some of the workmen sought a writ of mandamus against Praga Tool Corporation which was a company with 56 per cent of its share capital held by the Central Government, 32 per cent by the Andhra Pradesh Government and 12 per cent by private individuals. The Court held that a writ of mandamus did not lie, because Praga Tool Corporation 'being a non-statutory body and one incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty' (emphasis supplied). It is difficult to see how this decision can be of any help in deciding the present issue before us. This was not a case where Praga Tool Corporation claimed to be an instrumentality of government or an 'authority' within the meaning of Article 12. The only question was whether a writ of mandamus could lie and it was held that since there was no duty imposed on Praga Tool Corporation by statute, no writ of mandamus could issue against it.

29. The second decision to which we must refer is that in *Heavy Engineering Mazdoor Union v. State of Bihar* 1969-3 SCR 995 : (AIR 1970 SC 82). The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Limited (hereinafter referred to as the 'Corporation') and the Union made by the State of Bihar under Section 10 of the Industrial Disputes Act, 1947 was valid. The argument of the Union was that the industry in question was 'carried on under the authority of the Central Government' and the reference could, therefore, be made only by the Central Government. The Court held that the words 'under the authority' mean 'pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master' and on this view, the Court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously 'no' because the Corporation was carrying on business in virtue of the authority derived from its memorandum or articles of association and not by reason of any authority granted by the Central Government. The Corporation, in carrying on business, was acting on its own behalf and not on behalf of the Central Government and it was therefore not a servant or agent of the Central Government in the sense that its actions would bind the Central Government. There was no question in this case whether the Corporation was an instrumentality of the Central Government and therefore an 'authority' within the meaning of Article 12. We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government in the sense that whatever it does should be binding on the Government. It is not the relationship of principal and agent which is relevant and material but whether the Corporation is an instrumentality of the Government in

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the sense that a part of the governing power of the State is located in the Corporation and though the Corporation



is acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action. This decision dealing with an altogether different point has no bearing on the present issue.

30. We may then refer to the decision in *S. L. Agarwal v. General Manager, Hindustan Steel Ltd.*, (1970) 3 SCR 363 : (AIR 1970 SC 1150). This decision has also no relevance to the point at issue before us, since the only question in that case was whether an Assistant Surgeon in the employment of Hindustan Steel Limited could be said to be holding a civil post under the Union or a State so as to be entitled to the protection of Art. 311 (2) of the Constitution. The Court held that Hindustan Steel Limited was not a department of the Government nor were its employees holding posts under the State within the meaning of Article 311 (2). The decision was clearly right and indeed it could not be otherwise, since Hindustan Steel Limited, which was a distinct and independent legal entity, was not a department of the Government and could not be regarded as State for the purpose of Article 311 (2). It may be noted that the Court was not concerned with the question whether Hindustan Steel Limited was an 'authority' within the meaning of Article 12.

31. Lastly, we must refer to the decision in *Sabhajit Tewari v. Union of India*, 1975-1 SCC 485 : (AIR 1975 SC 1329) where the question was whether the Council of Scientific and Industrial Research was an 'authority' within the meaning of Article 12. The Court no doubt took the view on the basis of facts relevant to the constitution and functioning of the Council that it was not an 'authority', but we do not find any discussion in this case as to what are the features which must be present before a corporation can be regarded as an 'authority' within the meaning of Art. 12. This decision does not lay down any principle or test for the purpose of determining when a corporation can be said to be an 'authority'. If at all any test can be gleaned from the decision, it is whether the Corporation is 'really an agency of the Government'. The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an 'authority'.

32. We may examine, in the light of this discussion, whether the 1st respondent, namely, the International Airport Authority of India, can be said to be an authority falling within the definition of 'State' in Article 12. It is necessary to refer to some of the provisions of the International Airport Authority Act, 1971 (hereinafter referred to as the Act) for the purpose of determining this question. Sub-section (1) of Section 3 of the Act provides that the Central Government shall constitute an authority to be called the International Airport Authority of India, to whom we shall hereafter refer as the 1st respondent. Sub-section (2) states that the 1st respondent shall be a body corporate having perpetual succession and a common seal and sub-section (3) enacts that the 1st respondent shall consist of a Chairman to be appointed by the Central Government, the Director General of Civil Aviation ex-officio and not less than six and not more than thirteen members to be appointed by the Central Government. The term of office of every member of the 1st respondent is prescribed by sub-section (1) of Section 5 to be 3 years, but the Central Government is given under the Proviso power to terminate the appointment of any member who is not a servant of the Government after giving him notice as also to terminate at any time the appointment of any member who is a servant of the Government. The power to remove a member in certain specified circumstances is also vested in the Central Government under Section 6. Section 12, sub-sec. (1) provides that as from the date appointed by the Central Government all properties and other assets vested in the Central Government for the purposes of the airport and administered by the Director General of Civil Aviation immediately before such date shall vest in the 1st respondent and all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Central Government immediately before such date shall be deemed to have been incurred, entered into and engaged to be done by, with or for the 1st respondent. This sub-section also

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says that all non-recurring expenditure incurred by the Central Government for or in connection with the purposes of the airport up to the appointed date and declared to be capital expenditure by the Central Government shall be treated as the capital provided by the Central Government to the 1st respondent and all sums of money due to the Central Government in relation to the airport immediately before the appointed date shall be deemed to be due to the 1st respondent. The 1st respondent is also given the power to institute or continue all suits and other legal proceedings instituted or which could have been instituted by or against the Central Government for any matter in relation to the airport and every employee holding any office under the



Central Government immediately before the appointed date solely or mainly for or in connection with the affairs of the airport shall be treated as on deputation with the 1st respondent. Sub-section (1) of Section 12 also enacts similar provisions with regard to the air navigation services and the buildings used exclusively for such services immediately before the appointed date. The functions of the 1st respondent are specified in Section 16 : sub-section (1) provides that, subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of the 1st respondent to manage the airports efficiently and sub-section (2) casts an obligation on the 1st respondent to provide at the airports such services and facilities as are necessary or desirable for the efficient operation of air transport services and certain specific functions to be performed by the 1st respondent are particularised in sub-section (3). These functions were, until the appointed date, being carried out by the Central Government but now under Section 16 they are transferred to the 1st respondent, Section 20 provides that after making provision for reserve funds, bad and doubtful debts, depreciation in assets and all other matters which are usually provided for by companies, the 1st respondent shall pay the balance of its annual net profits to the Central Government. Section 21 requires the 1st respondent to submit for the approval of the Central Government a statement of the programme of its activities during the forthcoming financial year as well as its financial estimate in respect thereof at least three months before the commencement of each financial year and Section 24 provides that the accounts of the 1st respondent shall be audited annually by the Comptroller and Auditor General and the accounts as certified by the Comptroller and Auditor General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded to the Central Government and the Central Government shall cause the same to be laid before both Houses of Parliament. The 1st respondent is also required by Section 25 to prepare and submit to the Central Government, as soon as may be after the end of each financial year, a report giving an account of its activities during that financial year and this report has to be laid before both Houses of Parliament by the Central Government. The officers and employees of the 1st respondent are deemed by Section 28 to be public servants and Section 29 gives them immunity from suit, prosecution or other legal proceedings for anything in good faith done or intended to be done in pursuance of the Act or any rule or regulation made under it. Section 33 confers power on the Central Government to temporarily divest the 1st respondent from the management of any airport and to direct the 1st respondent to entrust such management to any other person. The Central Government is also empowered by Section 34 to supersede the 1st respondent under certain specified circumstances. Section 35 gives power to the Central Government to give directions in writing from time to time on questions of policy and provides that the 1st respondent shall, in the discharge of its functions and duties, be bound by such directions. Section 36 confers rule-making power on the Central Government for carrying out the purposes of the Act and power to make regulations is conferred on the 1st respondent under Section 37. Section 39 provides that any regulation made by the 1st respondent under any of the clauses (g) to (m) of sub-section (2) of Section 37 may make it penal to contravene such regulation.

33. It will be seen from these provisions that there are certain features of the 1st respondent which are eloquent

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and throw considerable light on the true nature of the 1st respondent. In the first place, the Chairman and members of the 1st respondent are all persons nominated by the Central Government has also the power to terminate their appointment as also to remove them in certain specified circumstances. The Central Government is also vested with the power to take away the management of any airport from the 1st respondent and to entrust it to any other person or authority and for certain specified reasons, the Central Government can also supersede the 1st respondent. The Central Government has also power to give directions in writing from time to time on questions of policy and these directions are declared binding on the 1st respondent. The 1st respondent has no share capital but the capital needed by it for carrying out its functions is provided wholly by the Central Government. The balance of the net profit made by the 1st respondent after making provision for various charges, such as reserve funds, bad and doubtful debts depreciation in assets etc. does not remain with the 1st respondent and is required to be paid over to the Central Government. The 1st respondent is also required to submit to the Central Government for its approval a statement of the programmes of its activities as also the financial estimate and it must follow as a necessary corollary that the 1st respondent can carry out only such activities and incur only such expenditure as is approved by the Central Government. The audited accounts of



the 1st respondent together with the audit report have to forwarded to the Central Government and they are required to be laid before both Houses of Parliament. So far as the functions of the 1st respondent are concerned, the entire department of the Central Government relating to the administration of airports and air navigation services together with its properties and assets, debts, obligation and liabilities, contracts causes of action and pending litigation is transferred to the 1st respondent and the 1st respondent is charged with carrying out the same functions which were, until the appointed date, being carried out by the Central Government. The employees and officers of the 1st respondent are also deemed to be public servant and the 1st respondent as well as its members, officers and employees are given immunity for anything which is in good faith done or intended to be done in pursuance of the Act of any rule or regulation made under it. The 1st respondent is also given power to frame regulations and to provide that contravention of certain specified Regulations shall entail penal consequences. These provisions clearly show that every test discussed above is satisfied in the case of the 1st respondent and they leave no doubt that the 1st respondent is an instrumentality or agency of the Central Government and falls within the definition of 'State' both on the narrow view taken by the majority in Sukhdev v. Bhagat Ram (AIR 1975 SC 1331) (supra) as also on the broader view of Mathew, J., adopted by us.

34. It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondents, but was bound to conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by the 1st respondent was discriminatory having no just or reasonable relation to the object of inviting tenders, namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd class restaurant should be awarded was laid down, the 1st respondent was not entitled to depart from it and to award the contract to the 4th respondents who did not satisfy the condition of eligibility prescribed by the standard or norm. If there was no acceptable tender from a person who satisfied the condition of eligibility, the 1st respondent could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it

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could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the 4th respondents. When the 1st respondents entertained the tender of the 4th respondent even though they did not have 5 years' experience of running a IInd class restaurant or hotel, it denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years' experience of running a IInd class restaurant, but who were otherwise competent to run such a restaurant and they might also have competed with the 4th respondents for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years' experience. The action of the 1st respondent in accepting the tender of the 4th respondents, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other persons similarly situate from tendering for the contract and it was also arbitrary and without reason. The acceptance of the tender of the 4th respondents was, in the circumstances invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhabiting arbitrary action.

35. Now, on this view we should have ordinarily set aside the decision of the 1st respondent accepting the tender of the 4th respondents and the contract resulting from such acceptance but in view of the peculiar facts and circumstances of the present case, we do not think it would be a sound exercise of discretion on our part to upset that decision and void the contract. It does appear from the affidavits filed by the parties that the appellant has no real interest in the result of the litigation, but has been put up by A. S. Irani for depriving the 4th respondents of the benefit of the contract secured by them. We find that number of proceedings have been instituted for this purpose from time to time by A. S. Irani either personally or by instigating others to take such proceedings. The

first salvo in the battle against the 4th respondent was fired by K. S. Irani, proprietor of Cafe Excelsior, who filed a suit challenging the decision of the 1st respondent to accept the tender of 4th respondents, but in this suit he failed to obtain an interim injunction and his appeal was dismissed by the High Court on 19th Oct. 1977. It is significant that when the tenders were opened in office of the Airport Director, Cafe Excelsior was represented by A.S. Irani, which shows that either Cafe Excelsior was a nominee of A.S. Irani or in any event K. S. Irani proprietor of Cafe Excelsior, was closely connected with A. S. Irani. Moreover, it is interesting to note that though the tender of the 4th respondents was accepted as far back as 19th April, 1977, K. S. Irani did not adopt any proceedings immediately but filed the suit only after A.S. Irani was informed by the Airport Director on 22nd August 1977 that a final order has been received from the Ministry requiring A. S. Irani to immediately close down his restaurant and snack bars. It is also a circumstance not without significance that A.S. Irani did not immediately take any proceeding for challenging the acceptance of the tender of the 4th respondents, but filed a suit in his own name only after the appeal of K. S. Irani was dismissed by the High Court on 19th October, 1977. These circumstances clearly indicate that the suit was filed by K. S. Irani at the instance of A.S. Irani or in any event in concert with him and when the suit of K. S. Irani failed to achieve the desired result, A. S. Irani stepped into the arena and filed his own suit. This suit was for a mandatory injunction seeking removal of the two snack bars which had in the meantime been put up by the 4th respondents pursuant to the acceptance of their tender by the 1st respondents. But in this proceedings also A. S. Irani failed to obtain an ad interim injunction. It was only after the failure to obtain interim relief in these two proceedings, one by K. S. Irani and the other by A. S. Irani that the appellant filed the present writ petition in the High Court of Bombay challenging the decision of the 1st respondents to accept the tender of the 4th respondents. Now, it appears from the record that the appellant was at the material time conducting a restaurant called Royal Restaurant and Store which was owned in partnership by three persons namely, J. K. Irani,

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K. M. Irani and G. S. Irani. G. S. Irani is the brother of A. S. Irani and he was managing and looking after the restaurant of A. S. Irani at the airport. It would, therefore, be a fair inference to make that the appellant was well connected with A. S. Irani and from the manner in which proceedings with a view to thwarting the attempt of the 4th respondents to obtain the benefit of their contract, have been adopted one after the other in different names, it does appear that the appellant has filed the writ petition at the instance of the A. S. Irani with a view to helping him to obtain the contract for the restaurant and the snack bars. It is difficult to understand why the appellant should have waited until 8th November, 1977 to file the writ petition when the tender of the 4th respondents was accepted as far back as 19th April, 1977. The explanation given by the appellant is that he was not aware of the acceptance of the tender of the 4th respondents but that is a rather naive explanation which cannot be easily accepted. It is not possible to believe that the appellant who was so well connected with A. S. Irani and G. S. Irani did not know that A. S. Irani had failed to obtain the contract for running the restaurant and the snacks bars and that this contract had been awarded to the 4th respondents as a result of which A. S. Irani was being pressed to close down his restaurant and snack bars. We have grave doubts whether this writ petition was commenced by the appellant bona fide with a view to protecting his own interest. Moreover, the writ petition was filed by the appellant more than five months after the acceptance of the tender of the 4th respondents and during this period, the 4th respondents incurred considerable expenditure aggregating to about Rs. 1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact setup the snack bars and started running the same. It would now be most inequitable to set aside the contract of the 4th respondents at the instance of the appellant. The position would have been different if the appellant had filed the writ petition immediately after the acceptance of the tender of the 4th respondents but the appellant allowed a period of over five months to elapse during which the 4th respondents altered their position. We are, therefore, of the view that this is not the fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion under the Article 226 of the constitution.

36. We accordingly dismiss the appeal and confirm the order of the High Court rejecting the writ petition. But in the circumstances of the case there will be no order as to costs throughout.

Appeal dismissed.

**AIR 2010 SUPREME COURT 1576****R. V. RAVEENDRAN, R. M. LODHA AND C. K. PRASAD, JJ.**

Civil Appeal Nos. 1886 with 1858 of 2007, D/- 31 -3 -2010.

Dalco Engineering Private Ltd. v. Shree Satish Prabhakar Padhye and Ors.

WITH

Fancy Rehabilitation Trust and Anr. v. Union of India and Ors.

(A) Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1 of 1996), S.2(k), S.47 - Establishment - Does not include private employees - Benefit of non-discrimination on acquiring disability - Not available to private employees - Words "Corporation established by or under a Central, Provincial or State Act" - Refers to a statutory Corporation brought into existence by a statute, or under a statute - Does not include company registered under Companies Act.

Interpretation of Statutes - Socio-economic statute - Liberal interpretation - Not to be beyond legislative intent.

The words 'a Corporation established by or under a Central, Provincial or State Act' is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under statute. The term is always used to denote certain categories of authorities which are 'State' as contrasted from non-statutory companies which do not fall under the ambit of 'State.' Where the definition of 'establishment' uses the term 'a corporation established by or under an Act,' the emphasis should be on the word 'established' in addition to the words 'by or under.' The word 'established' refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. A 'company' is not 'established' under the Companies Act. An

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incorporated company does not 'owe' its existence to the Companies Act. An incorporated company is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a Memorandum of Association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a 'company' is incorporated and registered under the Companies Act and not established under the Companies Act. Per contra, the Companies Act itself establishes the National Company Law Tribunal and National Company Law Appellate Tribunal, and those two statutory authorities owe their existence to the Companies Act. (Paras 8, 10, 11)

There is indication in the definition of 'establishment' itself, which clearly establishes that all companies incorporated under the Companies Act are not establishments. The enumeration of establishments in the definition of 'establishment' specifically includes 'a Government company as defined in S. 617 of the Companies Act, 1956.' This shows that the legislature, took pains to include in the definition of 'establishment' only one category of companies incorporated under the Companies Act, that is the 'Government Companies' as defined in S. 617 of the Companies Act. If all companies incorporated under the Companies Act are to be considered as 'establishment' for the purpose of S. 2(k), the definition would have simply and clearly stated that 'a company incorporated or registered under the Companies Act, 1956' which would have included a Government company defined under S. 617 of the Companies Act, 1956. The inclusion of only a specific category of companies incorporated under the Companies Act, 1956 within the definition of 'establishment' necessarily and impliedly excludes all other types of companies registered under the Companies Act, 1956, from the definition of 'establishment.' It is clear that the legislative intent was to apply S. 47 only to such establishments as were specifically defined as 'establishment' under S. 2(k) of the Act and not to other establishments. The legislative intent was to define 'establishment' so as to be synonymous with the definition of 'State' under Art. 12 of the Constitution of India. Private employers, whether individuals, partnerships, concerns or companies (other than

Government companies) are clearly excluded from the 'establishment' to which S. 47 of the Act will apply.
(Paras 12, 13)

There is yet another indication in S. 47, that private employers are excluded. The caption/marginal note of S. 47 describes the purport of the section as non-discrimination in Government employment. The 'Government' is used in the caption, broadly to refer to 'STATE' as defined in Art. 12 of the Constitution. If the intention of the legislature was to prevent discrimination of persons with disabilities in any kind of employment, the marginal note would have simply described the provision as 'non-discrimination in employment' and sub-section (1) of S. 47 would have simply used the word 'any employer' instead of using the word 'establishment' and then taking care to define the word 'establishment.'
(Paras 12, 13)

It is true that Courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes, and taxing statutes. But a caveat. The Courts obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the Legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute, that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of 'State' under Art. 12). Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application,

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those who are clearly excluded by such statute itself.
(Para 15)

(B) Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1 of 1996), S.39 - Reservation of seats in educational institutions - S.39 applies only to Government educational institutions and Govt. aided educational institutions - Not to unaided private educational institutions.
(Para 16)

Cases Referred :

Chronological Paras

AIR 2003 SC 1623 : 2003 AIR SCW 1013 : 2003 Lab IC 1133 (Ref.)	14.3
AIR 1987 SC 1023	14.1
AIR 1986 SC 458 : 1986 Lab IC 98 (Ref.)	14.2
AIR 1981 SC 422 : 1980 Lab IC 1292 (Ref.)	14.2
AIR 1981 SC 1395 : 1981 Cri LJ 871	3, 9, 14, 15
AIR 1976 SC 888 : 1976 Lab IC 576	9
AIR 1975 SC 1331 : 1975 Lab IC 881 (Ref.)	3, 9
(1971) 3 All ER 237 : (1971) 1 WLR 1381	14.2

Judgement

R. V. RAVEENDRAN, J. :- Facts in CA No. 1886/2007 :

The appellant is a private limited company incorporated under the provisions of the Companies Act, 1956. The respondent-S.P. Padhye (also referred to as 'the employee') was employed as a Telephone Operator by the appellant for more than two decades. The respondent's service was terminated by the appellant with effect from 31.12.2000 on the ground that he had become deaf (85% reduction in ability to hear). The respondent complained to the Disability Commissioner, Pune, in regard to such termination, alleging that he was fit, able and normal when he joined service of the appellant and as he acquired the hearing impairment during the period of service, he should have been continued in employment in some suitable post. The Disability Commissioner made an order dated 12.10.2001 suggesting to the employer to undertake a social responsibility, by re-employing the respondent to discharge any other work. The suggestion was not accepted by the employer.

2. According to the respondent, the Commissioner, instead of making a mere suggestion, ought to have issued a direction to the employer, in exercise of jurisdiction under section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Act', for short). He therefore filed a writ petition seeking the following reliefs (i) quashing of the order dated 12.10.2001; and (ii) a direction to implement the provisions of the Disabilities Act by directing the employer to reinstate him in service in a suitable post, with retrospective effect from 1.1.2001, in the same payscale and service benefits. The High Court allowed the said writ petition by judgment dated 23.12.2005, and directed the employer to reinstate the respondent and shift him to a suitable post with the same pay-scale and service benefits and with full back-wages. The High Court held that the respondent, though a private limited company, was an "establishment" as defined under section 2(k) of the Act and consequently section 47 of the Act enjoined it not to dispense with the services of its employee who acquired a disability.

Facts in CA No. 1858/2007 :

3. The first Appellant is a Public Trust (for short the Trust) working for the benefit of the physically and mentally challenged persons, took up a house-keeping contract from the third respondent Company on 24.7.2000. The appellant employed several physically handicapped persons for executing the said contract. The third respondent terminated the appellant's contract on 18.7.2006. Feeling aggrieved, the appellant filed a complaint dated 22.7.2006 with the Disability Commissioner, Pune followed by a writ petition in the High Court for quashing the notice terminating the contract. The appellant also sought a direction for rehabilitation of the

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persons with disabilities who were employed by it for executing the said housekeeping contract, under the provisions of the Act. A Division Bench of the Bombay High Court by judgment dated 19.9.2006 dismissed the writ petition holding that the third respondent was not an "establishment" within the meaning of section 2(k) of the Act and, consequently, the provisions of the Act did not apply and that the Disability Commissioner had no jurisdiction to issue any direction to the third respondent. It also held that the earlier decision in S.P. Padhye (which is the subject matter of the first case) was per incuriam as it ignored two binding decisions of this court - the Constitution Bench decision in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi [1975 (1) SCC 421] : (AIR 1975 SC 1331) and the decision in S.S. Dhanoa v. Municipal Corporation, Delhi [1981 (3) SCC 431] : (AIR 1981 SC 1395). Feeling aggrieved, the appellants have filed this appeal.

Questions for decision

4. The employee relies on section 47 which provides that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Section 47 of the Act is extracted below :-

"47. Non-discrimination in Government employment.- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

The term "establishment" employed in section 47 is defined in section 2(k) of the Act as follows :

"2. Definitions.-In this Act, unless the context otherwise requires, -

x x x x x

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government;"

5. The question is, having regard to the definition of the word 'establishment' by section 2(k) of the Act, whether the requirement relating to non-discrimination of employees acquiring a disability during the course of service, embodied in Section 47, is to be complied with only by authorities falling within the definition of State (as defined in Article 12 of the Constitution), or even by private employers. This leads us to the following two questions:-

(i) Whether a company incorporated under the Companies Act (other than a Government company as defined in section 617 of the Companies Act, 1956) is an "establishment" as defined in section 2(k) of the Act ?

(ii) Whether the respondent in the first case and the appellant in the second case are entitled to claim any relief with reference to section 47 of the Act ?

Re: Question (i)

6. Let us examine the meaning of the crucial word 'establishment' used in sub-section (1)

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of section 47 of the Act. The definition of the word 'establishment' in section 2(k), when analyzed, shows that it is an exhaustive definition, and covers the following categories of employers:

- (i) a corporation established by or under a Central, Provincial, or State Act;
- (ii) an authority or a body owned or controlled or aided by the Government;
- (iii) a local authority;
- (iv) a Government company as defined in Section 617 of the Companies Act, 1956; and
- (v) Departments of a Government.

It is not in dispute that the employers in these two cases are companies incorporated under the Companies Act, 1956 which do not fall under categories (ii) to (v) specified in Section 2(k) of the Act.

7. The employee contends that a company incorporated under the Companies Act is a Corporation falling under the first category enumerated in section 2(k), that is 'Corporation established by or under a Central, Provincial or State Act', on the following reasoning : that a corporation refers to a company; that Companies Act is a Central Act; and that therefore a company incorporated and registered under the Companies Act is a Corporation established under a Central Act. He contends that the use of the words "by or under" is crucial. According to him, 'a corporation established by an Act' would refer to a corporation brought into existence by an Act; and a 'corporation established under an Act' would refer to a company incorporated under the Companies Act. On the other hand, the employer contends that the term 'Corporation established by or under a Central, Provincial or State Act' refers to a statutory Corporation which is brought into existence by a statute, or under a statute and does not include a company which is registered under the Companies Act. It is submitted that Companies Act merely facilitates and lays down the procedure for incorporation of a company which, when incorporated, will be governed by the provisions of the said Act and therefore, a company registered under the Companies Act, is not a corporation established under an Act.

8. The words "a Corporation established by or under a Central, Provincial or State Act" is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under statute.



For example, it is used in sub-clause (b) of Clause Twelfth of Section 21 of the Indian Penal Code ('IPC' for short) and Section 2(c)(iii) of the Prevention of Corruption Act, 1988 ('PC Act' for short). Both these statutes provide that a person in the service of a 'Corporation established by or under a Central, Provincial or State Act' is a public servant. The Prevention of Damage to Public Property Act, 1984 defines 'public property' as meaning any property owned by, or in the possession of, or under the control of (i) the Central Government (ii) any State Government; or (iii) any local authority; or (iv) any corporation established by, or under, a Central, Provincial or State Act; or (v) any company as defined in Section 617 of the Companies Act, 1956; or (vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in that behalf provided that the Central Government shall not specify any institution, concern or undertaking under that sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments. Thus the term is always used to denote certain categories of authorities which are 'State' as contrasted from non-statutory companies which do not fall under the ambit of 'State'.

9. The meaning of the term came up for consideration in *S. S. Dhanoa v. Municipal Corporation, Delhi and Ors.*, 1981 (3)

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SCC 431 : (AIR 1981 SC 1395) with reference to section 21 of IPC. This Court held: "Clause Twelfth does not use the words "body corporate", and the question is whether the expression "corporation" contained therein, taken in collocation of the words "established by or under a Central, Provincial or State Act" would bring within its sweep a co-operative society. Indubitably, the Co-operative Store Limited is not a corporation established by a Central or State Act. The crux of the matter is whether the word 'under' occurring in Clause Twelfth of Section 21 of the Indian Penal Code makes a difference. Does the mere act of incorporation of a body or society under a Central or a State Act make it a corporation within the meaning of Clause Twelfth of Section 21. In our opinion, the expression 'corporation' must, in the context, mean a corporation created by the Legislature and not a body or society brought into existence by an act of a group of individuals. A co-operative society is, therefore, not a corporation established by or under an Act of the Central or State Legislature.

A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership.....

The term 'corporation' is, therefore, wide enough to include private corporations. But, in the context of Clause Twelfth of Section 21 of the Indian Penal Code, the expression 'corporation' must be given a narrow legal connotation.

Corporation, in its widest sense, may mean any association of individuals entitled to act as an individual. But that certainly is not the sense in which it is used here. Corporation established by or under an Act of Legislature can only mean a body corporate which owes its existence, and not merely its corporate status, to the Act. For example, a Municipality, a Zilla Parishad or a Gram Panchayat owes its existence and status to an Act of Legislature. On the other hand, an association of persons constituting themselves into a Company under the Companies Act or a Society under the Societies Registration Act owes its existence not to the Act of Legislature but to acts of parties though, it may owe its status as a body corporate to an Act of Legislature.

There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in *Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Ors.* (1975) 1 SCC 421 : (AIR 1975 SC 1331). It was observed :

A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act.

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into

existence, is governed in accordance with the provisions of a statute."

(Emphasis supplied)

In *Executive Committee of Vaish Degree College v. Lakshmi Narain*, 1976 (2) SCC 58 : (AIR 1976 SC 888), this Court explained the position further:

"In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such case to be asked is, if there is no statute, would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body."

[Emphasis supplied]

10. A 'company' is not 'established' under the Companies Act. An incorporated company does not 'owe' its existence to the Companies' Act. An incorporated company

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is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a Memorandum of Association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a 'company' is incorporated and registered under, the Companies Act and not established under the Companies Act. Per contra, the Companies Act itself establishes the National Company Law Tribunal and National Company Law Appellate Tribunal, and those two statutory authorities owe their existence to the Companies Act.

11. Where the definition of 'establishment' uses the term 'a corporation established by or under an Act', the emphasis should be on the word 'established' in addition to the words 'by or under'. The word 'established' refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between 'established by a Central Act' and 'established under a Central Act'? The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of State Bank of India Act, 1955 provides that a Bank to be called the State Bank of India shall be constituted to carry on the business of banking. Section 3 of Life Insurance Corporation Act, 1956 provides that with effect from such date as the Central Government may by notification in the Official Gazette appoint, there shall be established a corporation called the Life Insurance Corporation of India. State Bank of India and Life Insurance Corporation of India are two examples of corporations established by "a Central Act". We may next refer to the State Financial Corporation Act, 1951 which provides for establishment of various Financial Corporations under that Act. Section 3 of that Act relates to establishment of State Financial Corporations and provides that the State Government may, by notification in the Official Gazette establish a Financial Corporation for the State under such name as may be specified in the notification and such Financial Corporation shall be a body corporate by the name notified. Thus, a State Financial Corporation is established under a Central Act. Therefore, when the words "by and under an Act" are preceded by the words "established", it is clear that the reference is to a corporation established, that it is brought into existence, by an Act or under an Act. In short the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act.

12. There is indication in the definition of 'establishment' itself, which clearly establishes that all companies incorporated under the Companies Act are not establishments. The enumeration of establishments in the definition of 'establishment' specifically includes "a Government Company as defined in Section 617 of the Companies Act, 1956". This shows that the legislature, took pains to include in the definition of 'establishment' only one category of companies incorporated under the Companies Act, that is the 'Government Companies' as defined in Section 617 of the Companies Act. If, as contended by the employee, all Companies incorporated under the Companies Act are to be considered as 'establishments' for the purposes of Section 2(k), the definition



would have simply and clearly stated that 'a company incorporated or registered under the Companies Act 1956' which would have included a Government company defined under Section 617 of the Companies Act, 1956. The inclusion of only a specific category of companies incorporated under the Companies Act, 1956 within the definition of 'establishment' necessarily and impliedly excludes all other types of companies registered under the Companies Act, 1956, from the definition of 'establishment'. It is clear

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that the legislative intent was to apply section 47 of the Act only to such establishments as were specifically defined as 'establishment' under section 2(k) of the Act and not to other establishments. The legislative intent was to define 'establishment' so as to be synonymous with the definition of 'State' under Article 12 of the Constitution of India. Private employers, whether individuals, partnerships, proprietary concerns or companies (other than Government companies) are clearly excluded from the 'establishments' to which section 47 of the Act will apply.

13. There is yet another indication in section 47, that private employers are excluded. The caption/marginal note of section 47 describes the purport of the section as non-discrimination in Government employment. The word 'Government' is used in the caption, broadly to refer to 'State' as defined in Article 12 of the Constitution. If the intention of the legislature was to prevent discrimination of persons with disabilities in any kind of employment, the marginal note would have simply described the provision as 'non-discrimination in employment' and sub-section (1) of section 47 would have simply used the word 'any employer' instead of using the word 'establishment' and then taking care to define the word 'establishment'. The non-use of the words 'any employer', and 'any employment' and specific use of the words 'Government employment' and 'establishment' (as defined), demonstrates the clear legislative intent to apply the provisions of Section 47 only to employment under the State and not to employment under others. While the marginal note may not control the meaning of the body of the section, it usually gives a safe indication of the purport of the section to the extent possible. Be that as it may.

14. The learned counsel for the employee submitted that the decision in *Dhanoa* (AIR 1981 SC 1395) was rendered with reference to a penal statute; and that words or terms in such statutes are used in a restrictive and strict sense. He contended that definition of words and terms in a penal statute will not provide a safe guide to interpret the same words employed in socio-economic legislations. He further contended that the terms used in a socio-economic statute like Disabilities Act, providing for full participation and equality, for people with disabilities and to remove any discrimination against them vis-a-vis non-disabled persons, should be interpreted liberally. He submitted that any interpretation of the term 'a corporation established by or under a Central, Provincial or State Act' with reference to the Penal Code should not therefore be imported for understanding the meaning of that term when used in the Act. He referred to and relied upon the Statement of Objects and Reasons of the Act which states that India as a signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, enacted the Statute to provide for the following :

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and
- (vi) to make special provision of the integration of persons with disabilities into the social mainstream."

He submitted that keeping the said objects in view, the term 'establishment'

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should be extended to all corporations incorporated under the Companies Act 1956, irrespective of whether they are in the public sector or private sector.

14.1 He also relied upon the following principle of contextual interpretation enunciated by this Court in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*, 1987 (1) SCC 424 : (AIR 1987 SC 1023) :

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say is the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. The interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words, may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

14.2 He next relied upon the principle that words in a social welfare legislation should receive liberal and broad interpretation, stated by this Court in *Workman of American Express International Banking Corporation v. Management of American Express International Banking Corporation*, 1985 (4) SCC 71 : (AIR 1986 SC 458) :

"The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*, 1971 (3) All ER 237). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court* (1981) 1 SCR 789 : (AIR 1981 SC 422), we had occasion to say,

Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

14.3 He next relied upon the following observations in *Kunal Singh v. Union of India*, 2003 (4) SCC 524 : (AIR 2003 SC 1623 : 2003 AIR SCW 1013), where this Court, referring to the very section under consideration, observed thus :

"Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act."

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Language of section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

15. We agree that the socio-economic legislations should be interpreted liberally. It is also true that Courts

should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes, and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute, that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of 'State' under Article 12). Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself. We should not lose sight of the fact that the words "corporation established by or under a Central, Provincial or State Act" is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in Dhanoa (AIR 1981 SC 1395) which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are 'State' and non-statutory bodies and corporations, for purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of Indian Penal Code and Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of 'State' thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations etc.

16. The appellant next contended that the scheme of the Act, does not confine its applicability to government or statutory corporations. Reference is invited to some provisions of the Act to contend that obligations/duties/responsibilities are fixed with reference to persons with disabilities, on establishments other than those falling under section 2(k) of the Act. It was submitted that section 39 casts an obligation on all educational institutions, to reserve not less than three per cent. of the seats for persons with disabilities. In fact, it is not so. Though, the marginal note of section 29 uses the words 'all educational institutions' with reference to reservation of seats for persons with disabilities, the section makes it clear that only government educational institutions and educational institutions receiving aid from the government shall reserve not less than three per cent. seats for persons with disabilities. It is well recognized that an aided private school would be included within the definition of 'State' in regard to its acts and functions as an instrumentality of the State. Therefore, care is taken to apply the provisions of the Act to only educational institutions belonging to the government or receiving aid from the government and not to unaided private educational institutions. Further, section 39 of the Act, does not use the word 'establishment'. Reference is next made to the section 44 which requires non-discrimination in transport. This section requires establishments in the transport sector to take special measures (within the limits of their economic capacity) to permit easy access to persons with disabilities. The

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employee contends that this would mean that all establishments whether statutory corporations falling under the definition of section 2(k) of the Act or non-statutory corporations, or even individuals operating in the transport sector should comply with section 44 of the Act. We do not propose to consider whether Section 44 applies to non-statutory corporations in the transport sector, as that issue does not arise in this case. Further the use of the words "within the limits of their economic capacity" makes it virtually directory. Be that as it may.

Re : Question (ii)

17. As the appellant in CA No. 1886/ 2007 and the third respondent in CA No. 1858/2007, are not establishments, within the meaning of that expression in Section 2(k) of the Act, section 47 of the Act will not apply. In so far the CA No. 1858 of 2007, there is an additional factor. Third respondent therein was not the employer of any persons with disability. Therefore, in that case, the entire question is academic. In neither of the cases, any relief can be granted under section 47 of the Act.

18. Therefore CA No. 1886 of 2007 is allowed and CA No. 1858 of 2007 is dismissed resulting in the dismissal



of the respective writ petitions. This will not come in the way of employee of any private company, who has been terminated on the ground of disability, seeking or enforcing any right available under any other statute, in accordance with the law.

Order accordingly.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3902 OF 2013

Arising out of SLP (C) No. 23215 of 2007

RAM BHAROSEY LAL GUPTA (D) BY LRS. & ORS. APPELLANTS

VS.

M/S HINDUSTAN PETROLEUM CORP. LTD. & ANR. RESPONDENTS

J U D G M E N T

V. Gopala Gowda, J.

Leave granted.

2. This appeal is filed by the appellants who are owners of the property questioning the correctness of the impugned judgment dated 04.07.2007 passed in SA No.1812 of 1988 of the High Court of Judicature at Allahabad wherein it

has set aside the judgment and decree dated 10.08.1988 passed by the Ist Additional District Judge, Mainpuri in Civil Appeal No. 45 of 1987 arising out of judgment and decree passed by Munsif, Shikohabad dated 09.02.1987 in Original Suit No. 32 of 1984, urging various facts and legal contentions and prayed to set aside the impugned judgment and decree.

3. The property in question was leased out by lease deed dated 11.12.1960 by one Mansa Ram, father of the appellants in favour of M/s Caltex India Ltd. the demised property measures 120 x 100 feet situated on Agra Kanpur Road, Shikohabad. The said property was leased out in favour of M/s Caltex India Ltd. for the purpose of installing, erecting and maintaining on the said piece of land road ways and path ways and underground petrol, high speed oil tanks and delivery pumps etc. and to erect shelter for attendants and other buildings of permanent or temporary nature as well as other constructions

and carrying on with trade in petro and petroleum product with a right to carry on the said trade through its local dealers or agents and to use the property so demised at all times and for all purposes for an initial period of 20 years from 1.07.1960 renewable and determinable as provided in the lease deed on the monthly rent of Rs.50/-. The said lease deed was registered on 06.01.1961. The said property was mortgaged to one Ram Gopal, S/o Ramdayal on 12.01.1962.

4. In the year 1977 the Parliament enacted the law, namely, the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the undertakings in India of Caltex (India) Limited] Act 1977, being Act No. 17 of 1977 (hereinafter referred to as 'the Caltex Act') as well as of M/s Hindustan Petroleum Corporation Ltd. as the successor of the original lessee.

5. The first respondent Hindustan Petroleum Corporation Ltd. is the successor of original

lessee. On 15.04.1983, the appellant (since deceased) redeemed the said mortgaged property and the same was accordingly informed to the first respondent.

6. On 06.1983, the appellant issued a notice under Section 106 and 111 (g) of the Transfer of Property Act (hereinafter referred to as the T.P. Act) to respondent No.1 determining the tenancy of suit schedule property and directed the first respondent to vacate the same upon the expiry of the period of the notice and to hand over vacant possession of the same to him. The first respondent never sent any reply to the said notice.

JUDGMENT

7. A suit for ejectment of the respondents and for the possession of the suit schedule property was filed on 27.01.1984 despite service of notice of determination of tenancy which was neither replied nor complied with the demand for delivering the vacant possession of the leased

property in favour of the appellant. The original suit was filed by the appellant seeking for arrears of rent and decree of eviction against the first respondent and to pass an appropriate decree against it.

8. During the pendency of the suit, on 27.06.1984 the first respondent sent a notice to the appellant to execute the renewal of lease deed and in the said notice it had made reference about their notice dated 1.04.1980, wherein it is stated that it has sent a notice to the appellant for renewal of lease deed and undisputedly the notice was not sent to the mortgagee as the leased property was mortgaged in his favour and the rent was being paid to him and he was receiving rent upto April, 1983 in respect of the suit schedule property.

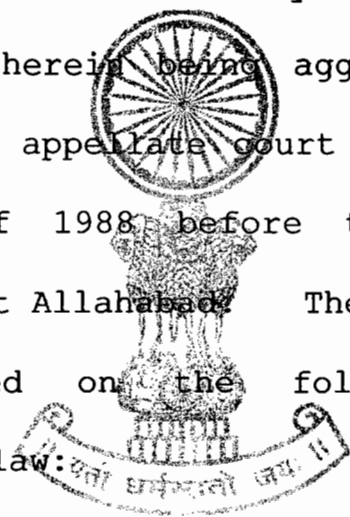
9. The first respondent filed written statement denying the allegations made in the plaint and further specifically pleaded that the lease deed

contemplated a provision for the renewal of the lease of the plot for a period of 20 years and a plea was taken that the notice for renewal of the lease was sent to the appellant. The respondent No. 2 filed an application for impleadment in the original suit proceeding which was allowed by the trial court. He also filed a written statement in the original suit.

10. On 09.02.1987, the trial court framed the issues and case went for trial where the suit for arrears of rent of Rs. 2450/- was decreed but held that the appellant was not entitled to terminate the tenancy in view of the Act of 1977 as the said Act is a Special Act and prevails over the Transfer of Property Act.

11. On 13.03.1987, aggrieved by the judgment and decree of the trial court the appellant filed Civil Appeal No. 45 of 1987 before the Ist Additional District Judge Mainpuri. The Ist appellate court vide its judgment dated

10.08.1988, allowed the appeal by setting aside the judgment and decree of the trial court after holding that the provisions of the Transfer of Property Act apply to the property in question and the tenancy of the first respondent has rightly been determined by the appellant. The respondents herein being aggrieved by the said order of the appellate court filed second appeal No. 1812 of 1988 before the High Court of Judicature at Allahabad. The said second appeal was admitted on the following substantial question of law:



"(1) Whether under clause 3 (d) of the lease deed executed between Mansa Ram and M/s Caltex India Ltd., the lessor was under the legal obligation to renew the lease term for further period of 20 years, if the conditions of clause 3 (d) were complied with?"

12. The second appeal was allowed by the High Court by answering the aforesaid substantial question of law in favour of the first respondent.

13. During pendency of the second appeal, the appellant Ram Bharosey Lal Gupta expired. An application for substitution of legal representative of the deceased appellant was filed by them along with applications for condonation of delay in filing the said substitution application and setting aside abatement. The High Court after hearing the parties answered the substantial question of law in the second appeal and set aside the judgment of the first appellate court and allowed the same by its judgment dated 04.07.2007.

14. The learned senior counsel Mr. Nagendra Rai has placed strong reliance upon the decision of this Court in the case of Bharat Petroleum Corporation Ltd. Vs. Maddula Ratnavalli and Ors.¹ questioning the correctness of the finding recorded on the substantial question of law as erroneous in law and error in law. Further, he has urged that it is the duty cast upon the court

¹ (2007) 6 SCC 81

to construe the provisions of the Act 17 of 1977, strictly as the Act being expropriatory legislation. Further, it is contended that whether interpretation of provisions of Section 7 of the Saltex Act be permitted to overlook fairness, reasonableness and non-arbitrariness in action on the part of the first respondent as it is 'State' in terms of Article 12 of the Constitution of India.

15. He further contended that no notice was issued to the mortgagee to invoke the right by the first respondent under Clause 3 (d) of the lease deed for renewal of lease of the property. It is an undisputed fact that rent was being paid by the first respondent to the mortgagee till 1.04.1983 and therefore, there is no compliance of the requirement under clause 3 (d) of the lease deed seeking for renewal of the lease of the property for a period of another 20 years as per the terms and conditions laid down in the said clause. The conduct of the first respondent

Corporation in continuing with the lease for a third term of 20 years commencing from 1.07.2000 to 30.06.2020 in the absence of any notice for renewal for the said period, is illegal, arbitrary and unreasonable. The High Court has failed to take into consideration the conduct of the first respondent in holding over the property of the appellants herein under the garb of automatic renewal of lease which action of the Corporation reflects undue enrichment for itself especially when the property as on date has a market value of crores of rupees.

16. It is further contended by the learned senior counsel that reasonableness, fairness and non-arbitrariness in action on the part of the first respondent Corporation should be there as it is a 'State' within the meaning of Article 12 of the Constitution. The same is not reflected in the case in hand as it has claimed renewal of lease under the Caltex Act 17 of 1977. The High Court has erred in law while interpreting the

compliance of the conditions of the clause 3 (d) of the lease deed by the first respondent. The High Court has erred in not following the law laid down by this court in Bharat Petroleum Corporation Ltd. case (supra) where duty has been cast upon the courts to construe the provisions of expropriatory legislation strictly. The High Court has also failed to take into consideration that the first respondent Corporation again took the shield of "special Act" and it cannot be permitted to enjoy any lease property in perpetuity. Further, the interpretation of clause 3 (d) of the lease deed, particularly the word "will" is not synonymous to words "obligatory" or "mandatory". The High Court has also erred in holding that there was deemed presumption of renewal on the part of the lessor without giving two months' advance notice before expiry of the original lease period as contemplated under clause 3 (d) of the lease deed and indisputably upon the mortgagee who had stepped into the shoes

of the mortgagor as he was being paid rent by the first respondent during the relevant period of time. Therefore, the interpretation made by the High Court in holding that there was a deemed presumption of renewal on the part of the lessor in relation to the leased property is erroneous in law. Further, the High Court has failed in interpreting the provisions of Section 7 of the context Act and the first respondent Corporation cannot be permitted to over look fairness, reasonableness and non-arbitrariness on its part.

17. The High Court has failed to take into consideration the conduct of the first respondent in continuing with the lease of the property for the third term of 20 years commencing from 1.07.2000 to 30.06.2020 in the absence of any notice for renewal for the said period to the owners of the property. Therefore, the learned senior counsel has prayed for setting aside the impugned judgment and decree of the High Court.

18. On the other hand, Mr. H.P. Raval, learned Additional Solicitor General appearing for the first respondent contended that the impugned judgment and order passed by the Ist appellate court is perfectly legal and valid as the same is in accordance with the provisions of Section 7 of the Calcutta Act and the conduct of the first respondent is fair and reasonable and he has offered a sum of Rs. 5000/- per month as the rent for the period having regard to the valuation of the property and further he has contended that beyond Rs.5000/- the Corporation cannot give rent to the appellants herein. Therefore, they have offered Rs.5000/- as rent against the demand of more than Rs.30,000/- per month made by the appellant's counsel in respect of the suit schedule property.

19. With reference to the above said rival legal contentions urged on behalf of the parties this Court is required to examine as to whether the substantial question of law framed by the High

Court and findings recorded in favour of the first respondent is vitiated in law and whether application of Section 7 of the Caltex Act to the leased property in question applies even though there is no fairness, reasonableness and non-arbitrariness on the part of the first respondent Corporation, is legal and valid?

20. The aforesaid points are answered in favour of the appellants by assigning the following reasons:-

The rent for the year 1960 for the vacant property was Rs.50/-. As per Clause 3 (d) of the lease deed, the renewal of the lease of the property for a period of 20 years is permissible if a desire is expressed by the lessee by issuing two months' notice to the lessor prior to expiry of the lease period of the property. Further, the renewal of lease must be for a further period of 20 years at the rate of 10% increase in the rental and containing the like covenants. This

Court has examined whether the High Court was justified in setting aside the judgment and decree of the first appellate court, by holding that there is deemed renewal of the lease of the demised property for a period of 20 years from 1.07.1980 to 1.07.2000, in the absence of renewal notice issued to the mortgagee on the date of expiry of the original lease period?

21. The lease of the demised premises is of the year 1960 renewable on a monthly rent of Rs.50/-. The lease deed was executed in favour of M/s Caltex India Ltd. The Caltex Act was enacted in the year 1977 and the first respondent Corporation was the automatic successor of the original lessee.

22. It is an undisputed fact that the appellant had executed a mortgage deed on 12.01.1962 in favour of Ram Gopal S/o Ramdayal, with possession and he had been receiving rent from the first respondent up to 1.04.1983. The Caltex Act of 17

of 1977 was enacted by the Parliament and the first respondent Corporation became successor in place of the original lessee. It is an undisputed fact that the first respondent Corporation sent a notice to the appellant for renewal of the lease in its favour. It is necessary for us to appreciate the correctness of the finding recorded by the High Court on the substantial question of law regarding the deemed renewal of the lease in favour of the first respondent for a period of 20 years from 1.07.1980 to 1.7.2000. The sub-clause 3 (d) reads thus:

"That the lessor will on the written request of the lessee made two calendar months before the expiry of the terms hereby created, and if there shall not at the time of such request by any existing breach or non-observance of any of the covenants on the part of lessee herein before contained, grant to it a tenancy of the demised premises for a further term of twenty years from the expiration of the said term at the rent of Rs. 50/- per month and containing the like covenants and provisos as are herein contained including a clause for renewal for the

further term of twenty years at 10% increase in rental and containing the like covenants and provisos as are herein contained so as to give the lessee in its option two further renewals each of twenty years."

23. By careful reading of the said clause of the lease deed having regard to the undisputed fact that the demised premises was mortgaged in favour of the mortgagee with possession as the appellant had executed mortgage deed in his favour on 12.01.1962, he continued to be a mortgagee till the property was redeemed in his favour on 15.4.1983. It is also the case of the first respondent that it had sent a notice for renewal of the lease deed to the appellant, but not to the mortgagee as he had stepped into the shoes of the owner of the mortgaged property till the same was redeemed to the appellant on 15.04.1983. In view of the above undisputed fact to avail the benefit of Clause 3 (d) of the lease deed, the first respondent should have sent the notice to the mortgagee of the property seeking renewal of

lease of the demised property as provided under the above clause. Therefore, the first respondent Corporation has failed to exercise its right to get the renewal of lease in respect of the demised premises. This aspect of the matter has been overlooked by both the trial court as well as the High Court though the first appellate court considered this aspect of the matter in its judgment. Therefore, the determination of tenancy of the demised property by the appellant under Section 106 of the T.P. Act is perfectly legal and valid. Further, it has been held that the first respondent after termination of tenancy continued in possession of the property as a tenant of holding-over. Thus, in law, holding over of the suit schedule property by the first respondent after the termination of lease is that of a trespasser not a tenant and therefore, it becomes liable to pay mesne profits by way of damages to the appellants.

24. The above important aspect of the matter has not been properly considered by the High Court while answering the substantial question of law. The High Court has committed serious error both on facts and in law in holding that there is deemed renewal of the demised premises in favour of the first respondent and it has not properly interpreted Section 7 of the Caltex Act regarding the fairness, reasonableness and non arbitrariness on the part of the first respondent Corporation though it has not complied with the requirements as provided under Clause 3 (d) of the lease deed. Therefore, framing of substantial question of law itself in the second appeal by the High Court is bad in law as the same does not arise at all. Having regard to the undisputed facts of the case in hand, the second appellate court has not rightly interpreted clause 3 (d) of the lease deed and the same is contrary to the facts and therefore, the finding recorded on the substantial question of law and

holding that there is a deemed renewal of the demised property for a period of 20 years in view of the notice dated 1.4.1980 sent to the

appellant but not to the mortgagee is not only erroneous but also error in law, therefore, the said finding is liable to be set aside. In the case of **Bharat Petroleum Corporation Ltd. Vs. Maddula Ratnavalli and Ors.** (supra) this Court has interpreted the provisions of Section 5(2) and 7 (3) of **Burnah Shell (Acquisition and Undertakings in India) Act, 1976** and Section 7 (3) of the **Caltex Act 1977**, with reference to the provisions of T.P. Act. Indisputably, 1976 Act is a special statute. No doubt, it over rides the provisions of Section 107 of the T.P. Act. Undisputedly, the first respondent Corporation is a 'State' as it is a successor of Caltex India Ltd. in terms of the definition of Article 12 of the Constitution of India. In the above referred case, vide para 13, this Court has laid down the legal principles after referring to its earlier

decision in the case of **Bharat Petroleum Corporation Ltd. Vs. P.Kesavan and Anr.**² The legal principle evolved therein shows that the finding recorded by the High Court in the impugned judgment on the substantial question of law is contrary to the decision of this Court as well as terms and conditions of clause 3(d) of the lease deed. The said paragraph is extracted hereunder:-

"13. The appellant company is a "State" within the meaning of Article 12 of the Constitution of India. It is, therefore, enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner whatsoever will meet the requirements of law. The statute uses the words "if so desired by the Central Government". Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. Indisputably, the 1976 Act is a special statute. It overrides the provisions of Section 107 of the Transfer of Property Act. The action of the State, however, must be judged on the touchstone of reasonableness. Learned counsellor for both the parties have relied upon a three-Judge Bench decision of this Court in **Bharat Petroleum Corpn. Ltd. v. P.**

² (2004) 9 SCC 772

Kesavan wherein this Court in para 11 has held as hereunder:

11. The said Act is a special statute vis-à-vis the Transfer of Property Act which is a general statute. By reason of the provisions of the said Act, the right, title and interest of Burmah Shell vested in the Central Government and consequently in the appellant Company. A lease of immovable property is also an asset and/or right in an immovable property. The leasehold right, thus, held by Burmah Shell vested in the appellant. By reason of sub-section (2) of Section 5 of the Act, a right of renewal was created in the appellant in terms whereof in the event of exercise of its option, the existing lease was renewed for a further term on the same terms and conditions. As noticed hereinbefore, Section 11 of the Act provides for a non obstante clause."

25. In view of the undisputed facts referred to supra and the clause 3 (d) of the lease deed regarding the renewal of lease for a period of 20 years after expiry of the initial period of renewal it has come to an end on 1.7.2000. Therefore, the first appellate court was right in holding that the possession of the demised property by the first respondent Corporation is

holding over month to month and therefore it is a trespasser of the said schedule property and therefore invoking Section 106 of the T.P. Act by the appellant and determining the tenancy by him and filing the suit for arrears of rent and also decree of ejectment of the first respondent from the demised premises is legally justified. Further, with reference to Section 7 of the Easements Act the action of the first respondent is unfair as there is no fairness, reasonableness and non-arbitrariness on its part to avail the right under the above provision for continuing as a tenant in respect of the demised property. Hence, we are required to set aside the impugned judgment of the second appellate court and restore the judgment and decree of the first appellate court. The first respondent Corporation is not even willing to give fair and reasonable rent as it has offered only Rs.5000/- per month whereas the rental market value of the property

according to the appellants counsel is more than Rs.30,000/- per month.

26. Therefore, we are of the view that the aforesaid decision of this Court on all fours be applicable to the fact situation in favour of the appellants. Accordingly, for the reasons stated supra we set aside the impugned judgment and order dated 04.07.2007 of the second appellate court passed in Second Appeal No.1812 of 1988 and restore the judgment and decree dated 10.08.1988 of the first Additional District Judge in Civil Appeal No. 45 of 1987. The appeal is allowed with no order as to costs.

.....J.
[CHANDRAMAULI KR. PRASAD]

.....J.
[V. GOPALA GOWDA]

New Delhi,
April 17, 2013.

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 926 OF 2009**

Mariappan

Appellant(s)

Versus

State of Tamil Nadu

.... Respondent(s)

J U D G M E N T

P.Sathasivam, J.

1) This appeal has been filed against the final judgment and order dated 17.10.2006 passed by the Madurai Bench of the Madras High Court in Criminal Appeal No. 1556 of 2003, whereby the High Court dismissed the appeal filed by the appellant herein and confirmed the order dated 29.08.2003 passed by the Additional District and Sessions Judge (Fast Track Court No. IV), Madurai at Periakulam in S.C. No. 390 of 2002.

2) **Brief facts**

a) The case on hand relates to the death of a woman in her house over a land dispute by the appellant-accused, claiming the plea of insanity under Section 84 of the Indian Penal Code, 1860 (in short 'the IPC'). Parvathi @ Kili (the deceased), her husband Parasivam Chettiar (PW-6) and their grand daughters viz., Chellakili (PW-1) and Parmala (PW-2) were living together at Ammapatti village. The deceased was the paternal aunt of the appellant-accused.

b) There was a dispute between the family of the appellant-accused and the deceased over a portion of land belonging to one Chinnamanur Pillayar Kovil, which was taken on lease by PW-6 through one Chinnamanur Karuvaya Pillai. The family of the appellant-accused claimed that the said land was only leased out to them. When the family of the appellant-accused demanded to handover the disputed land, PW-6, in turn, after the death of the said Chinnamanur Karuvaya Pillai, handed over the land to one Karuppaya Pillai (PW-11), son of Karuvaya Pillai which resulted in strained

relationship between both the families as the appellant-accused was demanding money for the same.

c) One day prior to the date of occurrence, i.e., on 04.11.2001, when PWs 1 and 2 were also at home, the appellant-accused came to the house of the deceased and questioned about the whereabouts of PW-6 and also told her that they have taken their land and money and threatened to kill them. At that time, PW-5, brother-in-law of PW-6 came there and pacified the appellant-accused. Thereafter, the appellant-accused left the place by saying that he would come again tomorrow and warned that if the money is not paid, he would kill her and her husband.

d) On 05.11.2001, at 8.00 a.m., while the deceased was in the kitchen, the appellant-accused entered into the house and closed the door from inside. When PWs 1 & 2 asked about the conduct of the appellant-accused, he said that if the deceased and her husband are not paying his money, he is going to kill them and went to the kitchen. Thereafter, the appellant-accused pulled the tuft of the deceased in his left hand and gave a cut on her neck with Aruval and when she

warded off with her right hand, it resulted into injuries to her fingers. At that time, PWs 1 & 2 requested the accused to leave her. Again, the accused caught hold of the tuft of her in his left hand and gave repeated Aruval blows on her head as a result of which she died instantaneously. Thereafter, the accused left the place with Aruval in his hand and after opening the door he said that he is going to kill PW-6 also. On raising hue and cry by PWs 1 & 2, the neighbors came there. PW-1 along with PW-5 went to the Uthamapalayam Police Station and after recording the statement given by PW-1 the sub-Inspector of Police (PW-16) registered a case being Crime No. 386 of 2001 for the offence punishable under Section 302 of the IPC. On the same day, at 4.30 p.m., the appellant-accused was arrested and the dead body was also sent for post mortem. After completion of the investigation, a charge sheet was filed and the case was committed to the Court of Additional District and Sessions Judge, (Fast Track Court No. IV) Madurai at Periakulam and numbered as Sessions Case No. 390/2002.

e) The Additional District and Sessions Judge, by order dated 29.08.2003, convicted the appellant-accused under Sections 449 and 302 of IPC and sentenced him to undergo RI for 5 years under Section 449 of IPC along with a fine of Rs.5,000/-, in default, to further undergo RI for 1 (one) year and to undergo RI for life for the offence under Section 302 of IPC alongwith a fine of Rs.10,000/-, in default, to further undergo RI for 5 years.

f) Aggrieved by the said order, the appellant filed an appeal being Criminal Appeal No. 1556 of 2003 before the Madurai Bench of the Madras High Court. By impugned judgment dated 17.10.2006, the High Court dismissed the appeal and confirmed the order dated 29.08.2003 passed by the Additional District and Sessions Judge (Fast Track Court No. IV), Madurai.

g) Against the said order, the appellant-accused has filed this appeal by way of special leave petition.

3) Heard Mr. Anil Shrivastav, learned counsel for the appellant and Mr. M. Yogesh Khanna, learned counsel for the respondent-State.

4) The one and only contention projected by learned counsel for the appellant-accused is that at the time of the alleged incident, the accused was suffering from "Paranoid Schizophrenia" and, hence, he is entitled to the benefit of exception under Section 84 of IPC.

Discussion:

5) Before considering the above issue, it is to be noted that whether the prosecution has established the guilt against the accused by examining PWs 1 and 2, the grand daughters of the deceased Parvathi, as eye-witnesses. It is the evidence of PW-6 - husband of the deceased that one day before the date of incident, when PWs 1 and 2 were at home along with his wife-Parvathi, the appellant-accused came to their house and demanded money and also threatened her before leaving the place that he would come again tomorrow and if money is not paid, he would kill both

the deceased and her husband PW-6. It is also stated by PWs 1 and 2 that on the next day, at 8.00 a.m., when the deceased was cooking food in the kitchen, the accused trespassed into the house, bolted the door from inside and, thereafter, caused fatal injuries to the deceased with the Aruval. It is further stated that on raising hue and cry, PWs 3 and 4, the neighbours, came at the spot and saw the accused running from the house with aruval.

6) The evidence of PWs 3 and 5-the neighbours, proves the occurrence that had happened one day prior to the date of the incident and also the shoutings of the accused-appellant threatening and demanding money. PW-6 has also explained in his evidence about the dispute relating to the lease of the temple land through one Chinnamanur Kuruvaya Pillai and handing over the said land to PW-11, son of the said Chinnamanur Kuruvaya Pillai. According to PW-6, because of the said land, there were strained relationship between the two families for more than 10 years and the appellant-accused used to quarrel with him and his wife as

to how the land leased out to their family could be handed over to PW-11 and was demanding money for the same.

7) The evidence of PWs 1 and 2 - the eye-witnesses, the evidence of PWs 3 and 4 who saw the accused running after the occurrence with Aruval (M.O.1) and the recovery of the weapon at the instance of the accused which was found to be stained with human blood of "O" group, as per the serologist report (Ex.P.12), tallied with the blood group of the deceased as the clothes of the deceased viz., M.O.s 1 to 4 were also stained with human blood "O" group clearly prove the case of the prosecution. Further, the medical evidence through PW-9-the Doctor, who conducted the post mortem and issued the report (Ex.P-3) strengthened the version of PWs 1 and 2.

8) From the materials analyzed, discussed and concluded by the trial Court and the High Court, it clearly establishes that it was the accused-appellant who committed the murder.

9) Coming to the only contention put-forward by the appellant-accused that the accused was suffering from Paranoid Schizophrenia, learned counsel for the appellant placed reliance on the evidence of DW-1 the Doctor attached to Government Rajaji Hosital, Madurai who treated the accused from 11.07.2001 to 08.08.2001. In his evidence, DW-1 has stated that the accused was suffering from Paranoid Schizophrenia. The other material relied on in support of the plea of insanity is Ex. D-2, the termination order of the Inspector General of Police, Northern Sector, CRPF, New Delhi wherein it is stated that the accused is medically unfit for service in CRPF due to Paranoid Schizophrenia. It is further contended that the appellant has also relied on the statement of PW-2, grand-daughter of the deceased, that the wife of the accused obtained divorce on the ground that the accused was mentally ill.

10) Since the appellant has raised the plea of insanity seeking protection under Section 84 of the IPC, it is useful to refer the same:

"84. Act of a person of unsound mind.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

The above section makes it clear that a person, who, **at the time of doing it**, by reason of unsoundness of mind, commits anything, he is permitted to claim the above exception (emphasis supplied). In other words, insanity or unsoundness of mind are the stages when a person is incapable of knowing the nature of the act or unable to understand what is wrong or right and must relate to the period in which the offence has been committed.

11) It is also useful to refer Section 105 of the Indian Evidence Act, 1872 which reads as under:

"105. Burden of proving that case of accused comes within exceptions.- When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

Though the burden of proving an offence is always on the prosecution and never shifts, however, the existence of

circumstances bringing the case within the exception under Section 84 IPC lies on the accused.

12) With these provisions, let us examine whether at the time of the incident the accused was suffering from unsoundness of mind, i.e., on 05.11.2001.

13) Learned counsel for the appellant-accused heavily relied on the decision of this court in **Shrikant Anandrao Bhosale vs. State of Maharashtra**, (2002) 7 SCC 748 wherein this Court considered the similar issue. A reference made from Modi's Medical Jurisprudence and Toxicology, 22nd Edition, as quoted in paras 10 and 11 are relevant, which reads thus:

"10. What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment? Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but afterwards change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general

sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from persecutory to the grandiose type. He entertains delusions of grandeur, power and wealth and generally conducts himself in a haughty and overbearing manner. The patient usually retains his memory and orientation and does not show signs of insanity until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others. (Modi's Medical Jurisprudence and Toxicology, 22nd Edn.)

11. Further, according to Modi, the cause of schizophrenia is still not known but heredity plays a part. The irritation and excitement are effects of illness. On delusion affecting the behaviour of a patient, he is a source of danger to himself and to others."

14) It is useful to refer the decision relied on by learned counsel for the State i.e. **Sudhakaran vs. State of Kerala**, (2010) 10 SCC 582. The facts in that case are identical to the case on hand. Here again, this Court referred to Modi's Medical Jurisprudence and Toxicology, 23rd Edition about paranoid schizophrenia. The following statement in paras 26 and 28 are relevant:

"26. The defence of insanity has been well known in the English legal system for many centuries. In the earlier times, it was usually advanced as a justification for seeking pardon. Over a period of time, it was used as a complete

defence to criminal liability in offences involving mens rea. It is also accepted that insanity in medical terms is distinguishable from legal insanity. In most cases, in India, the defence of insanity seems to be pleaded where the offender is said to be suffering from the disease of schizophrenia.

28. The medical profession would undoubtedly treat the appellant herein as a mentally sick person. However, for the purposes of claiming the benefit of the defence of insanity in law, the appellant would have to prove that his cognitive faculties were so impaired, at the time when the crime was committed, as not to know the nature of the act.

15) After adverting to Sections 84 and 299 IPC and Sections 105 and 101 of the Evidence Act, this Court concluded that "when a person is bound to prove the existence of any fact, the burden of proof lies on that person". This Court also held as under:

"35. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 is the time when the offence is committed. We may notice here the observations made by this Court in *Ratan Lal v. State of M.P.* In para 2 of the aforesaid judgment, it is held as follows:

"It is now well settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the [appellant]."

As concluded, we also reiterate that at the time of commission of offence, the physical and mental condition of the person concerned is paramount for bringing the case within the purview of Section 84.

16) In the case on hand, though the Doctor (DW-1) attached with the Government Rajaji Hospital, Madurai, who treated the accused from 11.07.2001 to 08.08.2001 has stated that the appellant/accused was suffering from paranoid schizophrenia, it is not in dispute that after 08.08.2001, there is no material or information on record that he was suffering from the same. It is relevant to mention that the date of occurrence was 05.11.2001 i.e. nearly after three months of the treatment by DW-1. In the same way, Ex. D-2, the termination order of the Inspector General of Police, Northern Sector, CRPF, New Delhi is also not helpful because of the language used in Section 84 of IPC. As a matter of fact, DW-2, father of the accused-appellant has not stated anything about the behaviour of the deceased. He has also not stated anything that he is a mentally ill person and not able to do his routine works

properly. In fact, it was brought to our notice that in Ex. D-2, which is a letter from the Department, it is seen that the appellant-accused made a written request for rejoining stating improvement in his health.

17) It is also relevant to note that the appellant came to the house one day prior to the occurrence, demanded money and threatened the deceased of grave consequences and on the next day, when the demand was not fulfilled, he trespassed into the house, pushed away PWs 1 and 2, bolted the door from inside and inflicted repeated brutal blows on the deceased resulting into her death. All these aspects also show that at the relevant time, he was not insane as claimed by him.

JUDGMENT

18) Another factor which goes against the appellant-accused is that he himself was examined as a defence witness No.3. According to learned trial Judge, as a witness, he made his statement clearly and cogently and it was also observed that he was meticulously following the court proceedings, acting suitably when the records were

furnished for perusal. The trial Judge has also pointed out that during the entire proceedings, the accused has nowhere stated that he was insane earlier to the date of incident. The trial Judge, after noting his answers in respect of the questions under Section 313 of the Code of Criminal Procedure, 1973 has concluded that the accused could not be termed as an "insane" person.

19) In the light of the above discussion and in view of the materials placed and the decision arrived at by the trial Court and of the fact that there is no evidence as to the unsoundness of mind of the appellant accused at the time of the occurrence, namely, on 05.11.2001 and also taking note of the fact that the accused failed to discharge the burden as stated in Section 105 of the Evidence Act, we fully agree with the conclusion arrived at by the trial Court and affirmed by the High Court.

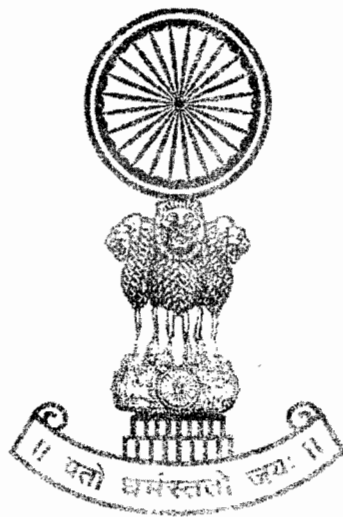
20) Consequently, the appeal fails and the same is dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(M. Y. EQBAL)

NEW DELHI;
APRIL 18, 2013.

SUPREME COURT OF INDIA



JUDGMENT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3914 OF 2013
[Arising out of SLP (C) No.12497 of 2008]

S. Malla Reddy ... Appellant(s)

VS.

M/s. Future Builders Co-operative Housing
Society & Ors. ... Respondent(s)

CIVIL APPEAL NO. 3916 OF 2013
[Arising out of SLP (C) No.17029 of 2009]

Jai Lakshmi ... Appellant(s)

M/s Future Builders Co-operative
Housing Society & Ors. ... Respondent(s)

CIVIL APPEAL NO.3915 OF 2013
[Arising out of SLP (C) No.28828 of 2008]

Raghava Reddy & Anr. ... Appellant(s)

VS.

M/s Future Builders Co-operative
Housing Society & Ors. ... Respondent(s)

J U D G M E N T

M.Y. EQBAL, J.

Leave granted.

2. The defendants (appellants herein) have assailed the common order dated 28.12.2007 passed by a learned Judge of the Andhra Pradesh High Court, whereby the Revision Petitions filed by the plaintiff-respondent (M/s Future Builders Coop Society) under Article 227 of the Constitution of India have been allowed and the order passed by the trial court allowing amendment in the written statement has been set aside.

3. The facts of the case lie in a narrow compass.

4. The plaintiff-respondent M/s. Future Builders Co-op. Housing Society (in short "the plaintiff Society") filed a suit against the defendant-appellants for declaration of title in respect of the property mentioned in the schedule of the plaint (in short "the suit property") and for perpetual injunction restraining the defendants from interfering with possession. The case of the plaintiff-Society is that the Society is a registered Society under the Andhra Pradesh Co-operative Societies Act with the object to acquire or purchase land for the benefit of its members and render it fit for habitation. The Society was founded by several promoters including the first defendant-S. Malla Reddy (appellant herein). The plaintiff's further case is that for the purpose of registration under Co-operative Societies Act, it was necessary to show to the Registrar that they have entered into an agreement for purchase of land for the benefit of its members. It was

alleged that before the Society was registered, its promoters identified the suit land as fit for the purpose and negotiated with the owner and entrusted the work to the first defendant for effecting purchase after measurement and a sum of Rs. 10,000/- was paid to him. The first defendant alleged to have executed an agreement on 8.3.1978 in favour of the Chief Promoter of the Society, *inter alia*, agreeing that the first defendant will get the land measured and obtain legal opinion and pay the money to the land owner. It was agreed that the sale deed would be obtained in the name of the first defendant and a patta would be got transferred in his name or of his nominee for the benefit of the Society. The Society was registered on 28.08.1981 and defendant No.1 having obtained a Sale Deed dated 02.01.1979 and transfer of patta in the name of himself and defendant Nos. 2 to 4 (appellants herein), who are his wife and sons in respect of the suit property, had delivered possession to the Society and they further agreed to secure the patta in the name of the plaintiff-Society. A Memorandum of Agreement dated 16.09.1981 was also executed to the effect that the plaintiff would hold the land as owner. It was alleged by the plaintiff-Society that the defendants, in spite of several requests and demands, were postponing the transfer of patta in respect of the suit property in its name on one pretext or the other. Hence, suit.

5. On being summoned, the defendants appeared and filed a joint written statement on 19.01.1995 admitting the claim of the plaintiff stating that after filing of the suit there was a mediation wherein the dispute was settled and, accordingly, a sum of Rs. 1,00,000/- was paid to them and they were then willing to transfer the patta in respect of the suit property in favour of the plaintiff who had already acquired title. The defendants, therefore, prayed to the court to decree the suit.

6. Controversy started when the defendants after filing of the written statement and admitting the claim of the plaintiff filed a petition being I.A. No.2217 of 1995 later renumbered as I.A. No.162 of 2000, seeking permission to change their advocates on the ground that they were acting detrimental to their interest by filing written statement contrary to the instructions. The said petition was objected by the plaintiff. The trial court by order dated 07.02.2000 permitted the defendants to change their advocates without prejudice to the rights of the parties. Thereafter, defendants filed another petition under Order VI Rule 16 of the Code of Civil Procedure (CPC) being I.A. No.415 of 2000 on 28.02.2000 seeking leave of the court to strike out the pleadings in the written statement or to expunge the written statement and to permit them to file a detailed written statement. It was alleged that the written statement filed earlier was in collusion with the plaintiff contrary to the instructions given by them to their

advocate. Another petition was filed by the defendants being I.A. No.416 of 2000 under Order VIII Rule 9 and Order VI Rule 5 of CPC seeking leave of the court to permit them to file a detailed written statement. Some more developments took place during the pendency of those petitions. The youngest son of the first defendant filed a petition being I.A. 1819 of 2000 seeking leave of the court to implead him as party to those two interlocutory petitions which was, however, allowed and the said son was brought on record.

7. The trial court after hearing the parties dismissed both the petitions being I.A. Nos.415 and 416 of 2000 by common order dated 04.01.2002. The defendant- appellants challenged the said order by filing Civil Revisions in the High Court being CRP Nos.502 and 505 which were ultimately dismissed on 18.09.2002. The defendant-appellants then filed review petition being Review CMP No. 2102 of 2003 which was also dismissed on 25.06.2003. The defendants then preferred appeals to this Court in Civil Appeal Nos. 7940 to 7942 of 2004 which were also dismissed on 15.03.2007.

8. After the defendants lost the claim upto this Court and their prayer was refused, a fresh petition under Order VI Rule 17 CPC was filed seeking leave of the Court to amend the written statement. The said application was registered as I.A. SR No. 593 of 2007. The trial court rejected the said application by a non-speaking order. The order was challenged in the High Court in Revision which was disposed

of with the directions to the trial court to register the application and dispose of the same by passing a reasoned order. The trial court in compliance of the aforesaid directions finally heard the amendment petition and by order dated 27.09.2007 allowed the petition permitting the defendants to amend the written statement.

9. The plaintiff-Society challenged the aforesaid order allowing amendment of the written statement by filing revision petitions before the High Court. The said revision petitions filed by the plaintiff-Society under Article 227 were heard at length and finally those petitions were allowed by the High Court vide order dated 28.12.2007 and the order of the trial court allowing amendment of the written statement was set aside. Hence, these appeals by special leave filed by the defendant-appellants.

10. We have heard the learned counsel appearing for the parties. Mr. Dushyant A. Dave, Senior Advocate and Mr. Huzefa A. Ahmadi, Senior Advocate appearing for the defendant-appellants drew our attention to various decisions of this Court for the proposition that the admission made in the written statement can be withdrawn and inconsistent plea can be taken in the written statement. Learned counsel also tried to impress us that the order passed on the petition under Order VI Rule 16 and Order VIII Rule 9 will not operate as *res judicata* on the subsequent application filed under Order VI Rule 17 of CPC. Learned counsel submitted that the High Court has not correctly

appreciated the settled principle of law and has passed the impugned order without considering the entire gamut of the case.

11. On the other hand, Mr. L. Nageswara Rao, learned Senior Advocate appearing for the plaintiff-Society (respondent herein) firstly contended that the application for amendment is liable to be rejected on the sole ground that it was filed 13 years after the institution of the suit and that too when the trial of the suit had begun and the plaintiff's witness was cross-examined. Mr. Rao contended that the disruptive plea cannot be allowed to be taken by way of amendment in the written statement. According to the learned counsel, the ground taken by the defendants for amending the written statement has already been discussed in the earlier petition filed under Order VI Rule 16 and that under Order VIII Rule 9 and Order VI Rule 5 CPC. The said applications were rejected by the trial court and the order was affirmed by this Court also.

12. Before appreciating the rival contentions, we would like to first reproduce the written statement filed by the defendant-appellants in the suit. The written statement contains of only four paragraphs, which are as under:-

**"WRITTEN STATEMENT FILED UNDER ORDER 8 RULE 1
CIVIL PROCEDURE CODE by Defendants 1 to 4**

1. The first defendant was entrusted with the work of purchase of the land for the Plaintiff's Society before its incorporation. Since there was delay in the registration and incorporation of the Society, the suit land was purchased in the name of the First

Defendant who is also one of the Promoters from Sri Mohammad Sarvar and others and the patta was transferred in the name of these defendants. These defendants held it for the benefit of the plaintiffs and after the Society was incorporated on 28.8.2001, delivered the land to the plaintiff and also executed a Memorandum dated 16.9.1981 which was ratified by the Plaintiff Society.

2. One of the terms of the Memorandum was that the plaintiff agreed to pay the expenses incurred by the defendants for the development and protection of the land. Since the plaintiff postponed the settlement of accounts, these defendants did not apply for transfer of patta in favour of the plaintiff.

3. After the suit is filed there is mediation and settlement and a sum of Rs. 1,00,000/- (Rupees one lakhs only) is paid as full quid to these defendants and these defendants are willing to transfer of the patta in favour of the plaintiff who has already acquired the title as stated in the plaint.

4. Hence the suit may be decreed as prayed for but without costs.

Defendants

- 1.
- 2.
- 3.
- 4.

Counsel for the Defendants 1 to 4

Verification

The facts stated above are true to the best of our knowledge, belief and information."

13. From bare perusal of the written statement, it is manifestly clear that the defendant-appellants categorically admitted not only the case of the plaintiff but also acknowledged receipt of Rs. 1,00,000/- and their willingness for transfer of patta in favour of the

plaintiff. The defendants, on the basis of such admission, prayed to the court that the suit be decreed but without any costs.

14. As noticed above, the defendant-appellants filed application on 28.02.2000 under Order VI Rule 16 of CPC being I.A. No. 415 of 2000 praying that the earlier written statement be struck out since the same was against their interests. Another application being I.A.No.416 of 2000 under Order VIII Rule 9 CPC was filed praying that the defendants may be permitted to file detailed written statement in the suit since the earlier written statement filed by them was against their interests. Both applications were taken up together by the trial court and disposed of by common order dated 04.01.2002. The trial court while rejecting the aforementioned two applications held that the defendant-appellants cannot be allowed to substitute their written statement in the suit whereunder there was an admission of the claim of the plaintiff-Society. While rejecting the applications, the trial court elaborately discussed the facts of the case and considered the arguments advanced by the lawyers as also the decisions relied upon by them with regard to withdrawal of admission by filing fresh written statement.

15. At this stage, we must mention that even before the suit was instituted by the plaintiff-Society, the defendants had filed a caveat duly supported by affidavit through the same advocate wherein the entire claim of the plaintiff-Society was admitted. The

only grievance made in the caveat was that without settlement of the amount due as agreed under the Memorandum of Agreement, the plaintiff-Society was trying to lay out the suit land and to dispose of the same without paying the amount due. The relevant paragraphs of the trial court order dated 04.01.2002 are quoted hereinbelow (from pages 165-170 of paper book):

"16. The learned counsel for the petitioner, referring to the earlier suit litigation between the defendants and others, contended that there is no reason for the defendants to admit the suit claim of the plaintiffs society but for the reasons that fraud was played upon the defendants in filing their written statement. The learned counsel for the petitioner relying upon the decision in BHIKAJI KESHAO JOSHI AND ANOTHER vs. BHIML NANDLAL BIYANI and OTHERS (AIR 1955 SC 620) contended that the Court can order strike out of the written statement and permit the defendants to file substituted written statement with specific pleadings. In the said decision, the petitioner in the said election petition made vague allegations of corrupt practices of the respondent and in the said circumstances it was found that the court can exercise its powers and call for better particulars. It is not the case of the petitioners - defendants herein that their written statement pleadings are vague and that therefore, to furnish better particulars the earlier written statement filed on their behalf may be struck out and they may be permitted to file a detailed substituted written statement. In the written statement filed on behalf of the defendants in the suit OS No.408/94 (OS 1 of 2000 on the file of this court) the defendants had categorically admitted the entire suit claim and have further mentioned that they had no objection for the suit to be decreed. No doubt, it is the contention of the petitioners that their advocate Sri Sunil Kumar obtained their signatures on blank paper and that is contrary to their instructions he prepared the written statement in collusion with the plaintiff- society admitting the suit claim for which they had

complained against the said advocate to Bar Council of Andhra Pradesh. Ex.B.1 is the Xerox certified copy of caveat number 178/94 on the file of Illrd Additional Judge, City Civil Court, against the plaintiff society on 07.07.1994. In the said caveat petition also, the defendants in the suit admitted the entire claim of the plaintiff-society but the grievance of the defendants under that caveat was without settlement of the amount due as agreed under the memorandum of agreement, the plaintiff society was trying to lay out the suit land and to dispose it of without paying his amount and that, therefore, if any injunction suit is filed against him with respect to the said property, he may be given notice. There is no explanation given by the petitioners herein in these petitions with respect to the said admission of the defendants herein in the said caveat petition. In fact, it was pleaded in the written statement in question by the defendants that after the suit was filed there was mediation and sum of Rs. 1,00,000/- was paid to them towards settlement. No doubt the said caveat petition was also filed by the same advocate Sri Sunil Kumar but in the affidavit filed in support of these two petitions, the 1st defendant did not explain about his admissions in the said caveat petition with respect to the suit schedule properties in favour of the plaintiff society.

17. The learned counsel for the 1st defendant-plaintiff Society relying upon the decisions in MODI SPINNING AND WEAVING MILLS COMPANY LIMITED AND ANOTHER VS. M/S LADHA RAM AND COMPANY (AIR 1977 Supreme Court 680), B.K. NARAYANA PILLAI AND PARAMESWARAN PILLAI AND ANOTHER (2000) 1 Supreme Court Cases 712 and HEERALAL AND KALYAN MALAND AND OTHERS (1998) 1 Supreme Court Cases 278) contended that any amendment introducing entirely different new case and seeking to displace the plaintiff the benefit completed from the admission made by the defendants in the written statement, is not permissible. In the decision in MODI SPINNING AND WEAVING MILLS COMPANY LIMITED VS. M/S LADHA RAM AND COMPANY (AIR 1988 Supreme Court 680) by means of an amendment the defendant wanted to introduce an entirely different case. In the facts and said circumstances, it was held that the defendants

cannot be allowed to change completely the case made out in their written statement and to substitute an entirely different new case and that if such amendments are allowed the plaintiffs will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. In HEERALAL vs. KAYALAN MAL AND OTHERS (1998) 1 Supreme Court Cases 278, and HEERALAL vs. KAYALAN MAL AND OTHERS (AIR 1998 Supreme Court 618), it was held that once the written statement contains an admission in favour of the plaintiff, the amendment of such admission of the defendants cannot be allowed to be withdrawn and such withdrawal would amount to totally displacing the case of the plaintiff which would cause him irretrievable prejudice. In B.K. Narayana Pillai and Parameshwaran Pillai and Another (2000) 1 Supreme Court Cases 712, it was held though the defendant has a right to take alternative pleas in defence by way of amendment, it would be subject to qualification that (i) Proposed amendment should not result in injustice to the other side; (ii) any admission made in favour of plaintiff should not be withdrawn; and (iii) inconsistent and contradictory allegations which negate admitted facts should not be raised. Under the present petitions, the petitioners - defendants are intending to take away the admission made by them in regard to the suit claim of the plaintiff society. The law is that no additional written statement should not set up a totally new case or state facts at direct variance with the original written statement so as to completely change the issue in the case. This is not a case where the defendants are intending to take alternative pleas or that they are intending to explain the vague pleadings made by them in their written statement filed. This is also not a petition to file additional written statement but as a petition to substitute the original written statement to get over the admissions made in favour of the plaintiff society. There is no material placed before the court to substantiate their affidavit. As already stated, the documents filed are not helpful to support the affidavit of the petitioner in regard to the allegations made against their previous advocate so as to request the court to permit them to file a detailed written statement, in the place of their earlier written

statement in which they had admitted the entire claim of the plaintiff society. A perusal of written statement which is sought to be substituted in the place of the earlier written statement discloses that the defendants plead an entire new case against the admissions made by them in the written statement. In view of the settled law of the Apex Court the petitioners cannot be permitted to request the court to strike out the earlier written statement filed by them or to permit them to substitute a fresh written statement in contrary to the admission made by them in their written statement.

18. No doubt, the petitioner had filed criminal proceedings against the said Advocate and others and copies of those criminal proceedings are filed in this petition. Admittedly, the said Criminal Case is pending. Moreover, it was subsequent to the filing of I.A. 2217/95. It is well-established principle of law that the decisions of the Civil Courts are binding on the criminal courts and the converse is not true (vide decision in *Karamchand vs Union of India* (AIR 1977 Supreme Court 1244)). The plaintiff society is not a party to the earlier civil proceedings, which are filed in this petition on the behalf of the Petitioners. Therefore, those documents, which are filed on behalf of the petitioners-defendants are not binding on the first respondent - plaintiff society. The revenue records, filed are also not helpful for the petitioners in support of their contention in this petition. Whether the chief promoter was by the date of the agreement was a minor as contended by the petitioners is also not a question relevant for the purpose of this petition. Thus, this court holds that the documents filed on behalf of the petitioner do not advance the claim of the petitions. For the foregoing reasons and in view of the law enunciated by the Hon'ble Apex Court, the petitioners-defendants cannot be permitted to substitute the earlier written statement filed by them in the suit whereunder there was an admission of the suit claim of the plaintiffs society, by way of an entirely new written statement taking contradicting pleas. Thus this court does not find any merits in the petitions.

19. In the result, the petitions are dismissed but without costs."

16. On the basis of the findings recorded by the trial court, defendants' two petitions under Order VIII Rule 9 and Order VI Rule 16 CPC were dismissed holding that the defendants cannot be permitted to substitute the earlier written statement wherein there was an admission of the suit claim of the plaintiff-Society.

17. Aggrieved by the aforesaid order, the defendants preferred revision petitions before the High Court. Before the High Court it was argued that though some admissions were made in the written statement, the same can be withdrawn by filing a fresh detailed written statement. Dismissing the said revision petitions, the High Court in its order dated 18.09.2002 (pages 184 to 186 of paperbook) observed:-

"The court below had elaborately discussed this aspect I agree with the reasoning and finding thereof given by the court below on this aspect and I hold that they are perfect and valid.

Before the court below the defendant relied on a judgment reported in Bhikaji Keshao Joshi and another vs. Brijlal Nadanlal Biyani and others (AIR 1955 SC 610) and contended that the court can order striking out of the written statement and permit the defendants to file substituted written statement with specific pleadings. The court below rightly distinguished the same and held that it is not applicable.

The lower appellate court while dismissing the I.As. relied on a judgment of the Apex Court reported

in HEERALAL vs. KAYALAN MAL AND OTHERS (AIR 1998 SC 618), wherein it was held that once the written statement contains an admission in favour of the plaintiff, the amendment of such admission of the defendants cannot be allowed to be withdrawn and such withdrawal would amount to totally displacing the case of the plaintiff which would cause him irretrievable prejudice. In another decision of the Supreme Court referred to by the Court below in B.K. NARAYANA PILLAI vs. PARAMESHWARAN PILLAI AND ANOTHER (2000 (1) SCC 712) it was held that though the defendant has a right to take alternative pleas in defence by way of amendment, it would be subject to qualifications which are (1) proposed amendment should not result in injustice to the other side and (2) any admission made in favour of the plaintiff should not be withdrawn and (3) inconsistent and contradictory allegations which negate admitted facts should not be raised.

In the present case the question now is whether the admission made by the defendant in favour of the plaintiff can be withdrawn and the answer in the language of the apex court, is 'not permissible'.

As already discussed the admissions made in the written statement are absolutely matching with the original stand taken by the 1st defendant in the affidavit filed to his caveat petition and also with the pleadings and the only dispute raised is with regard to payment of money to the defendant. In such a case, I am of the strong view that the defendant had not approached the court with clean hands in filing the present I.As.

It has to be further noticed that the allegations made against the counsel are not established so far. Mere filing of a complaint before the police or before the Bar Council of India, in the circumstances like the present one would only jeopardize the decency and dignity of the profession of the Advocate. This attitude of making wild and baseless allegations against the counsel has to be dissuaded by all means. However, this observation shall not be understood as an opinion expressed by this court on the proceedings already initiated and pending against the said

counsel. To put in a different way, the original stand of the defendant as stated in the affidavit filed in support of the caveat petition, demolishes or cuts across the very basis for filing the present I.As. I am of the further view that if these types of allegations are made without substantiating them and if they are encouraged, it would lead to a situation where litigants with false cases would resort to smudging the career of genuine or innocent advocates. The conduct on the part of the defendant is palpably mischievous and this court cannot lend any kind of support to a litigant like the defendant, who has approached the court with unclean hands.

It is also brought to the notice of this Court that in another suit which is not connected with the present suit, the defendant resorted to similar type of allegations against another counsel, and of course the trial court did not take into consideration those allegations.

The court below had discussed in detail all the aspects and dismissed the I.As. with cogent and convincing reasons and I do not find any valid ground to interfere with the same. Accordingly, I pass the order as under.

The revisions petitions are dismissed with costs."

18. The relevant paragraphs of the orders passed by the trial court and the High Court have been quoted hereinbefore mainly for the reason that while considering the petitions under Order VIII Rule 9 and Order VI Rule 16 both the courts have also gone into the question as to whether those admissions could be withdrawn by permitting the defendants to file a fresh written statement or by striking out of the earlier written statement.

19. Aggrieved by the above said orders, the appellants moved this Court in Civil Appeal No.7940-7942 of 2004. Finding no merit, this Court dismissed the appeals by order dated 15.03.2007.

20. Instead of participating in the suit, the defendant-appellants filed another petition purported to be under Order VI Rule 17 CPC seeking amendment of the written statement. The said amendment petition was allowed by the trial court and against that the plaintiff Society preferred revision before the High Court. The High Court by passing the impugned order dated 28.12.2007 allowed the revision petitions and set aside the order passed by the trial court. The High Court held as under :-

"15. The ratio in **THE UNITED PROVINCES ELECTRIC SUPPLY CO. LTD.** case (AIR 1972 SC 1201) that decision on any particular point given in an order of remand does not operate as *res judicata* in an appeal filed against the final order passed after the remand; does not apply to the facts of this case because there is no 'order of remand' in this case as plaintiff is not relying on any of the observations in an 'order of remand' to contest the applications made by the defendants.

16. In view of the ratio in **SATYADHYAN GHOSAL** case (AIR 1960 SC 941), **ARJUN SINGH** case (AIR 1964 SC 993) and **THE UNITED PROVINCES ELECTRIC SUPPLY CO. LTD.** case (..supra) successive applications for the same relief cannot be permitted, and they can even be rejected as an abuse of the process of Court.

17. It is contended by the learned counsel for the defendants that subsequent to the filing of I.A. No.416 of 2000, defendants came to know through the report of an expert that the written statement filed on their behalf was typed on the same typewriter on which the

plaint was typed. In the common order challenged in these revisions, the trial Court considered that contention and held that that contention has to be decided at the time of trial, but cannot be considered at this stage. For the reasons given by the trial court, that finding cannot be said to be erroneous.

18. As rightly contended by the learned counsel for the plaintiff, the trial Court which agreed with the contention of the plaintiff that defendants cannot by invoking the plea of fraud seek the amendment sought, allowed the petitions only on the basis of the observations made in **UDAY SHANKAR TRIYAR V. RAM KALEWAR PRASAD SINGH** AIR 2006 SC 269. In the very same judgment the apex Court held that procedure, a hand maiden to justice, should never be made a tool to carry justice of perpetuate injustice by any oppressive or punitive use. The trial Court without keeping in view the fact the defendants cannot repeatedly file the petition for the same relief which was negated earlier, in a different form, by quoting different provisions of law, thought it fit to allow the petitions and thereby virtually set at naught the order of dismissal of IA Nos. 415 and 416 of 2000 passed by it earlier which order was confirmed by this Court and the Apex Court also."

21. Before going into the merits of the case, we would like to refer two of the provisions viz. Order VI Rule 16 and Order VI Rule 17 CPC which are involved in the instant case. These two provisions read as under:-

"16. Striking out pleadings— The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.]

17. Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."



22. Order VI Rule 16 CPG has been substituted by the CPC (Amendment) Act, 1976. This provision deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings. In other words, the plaintiff or the defendant may ask the court for striking out pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious. This Rule is based on the principle of *ex debito justitia*. The court is empowered under this Rule to strike out any

matter in the pleadings that appears to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit.

23. On the other hand, Order VI Rule 17 CPC empowers the court to allow either party to alter or amend his own pleading and on such application the court may allow the parties to amend their pleadings subject to certain conditions enumerated in the said Rule.

24. Although the defendant-appellants filed the petition for striking out their own pleading i.e. written statement, labelling the petition as under Order VI Rule 16 CPC, but in substance the application was dealt with as if under Order VI Rule 17 CPC inasmuch as the trial court discussed the facts of the case and did not permit the defendants to substitute the written statement whereunder there was an admission of the suit claim of the plaintiff-Society. The relevant portion of the order quoted hereinabove reveals that the trial court while rejecting the aforementioned petition, held that the defendant-appellants cannot be allowed to substitute their earlier written statement filed in the suit whereunder there was an admission of the claim of the plaintiff-Society

(respondent herein). Similarly in the revision filed by the defendants, the High Court considered all the decisions referred by the defendants on the issue as to whether the defendants can withdraw the admission made in the written statement and finally came to the conclusion that

the defendant-appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order VIII Rule 9 or Order VI Rule 16 CPC by seeking to file a fresh written statement. In the aforesaid premises, filing of a fresh petition by the defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent application for the same relief is an abuse of the process of the court. As noticed above, the relief sought for by the defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the defendant-appellants under Order VI Rule 16 and Order VIII Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable.

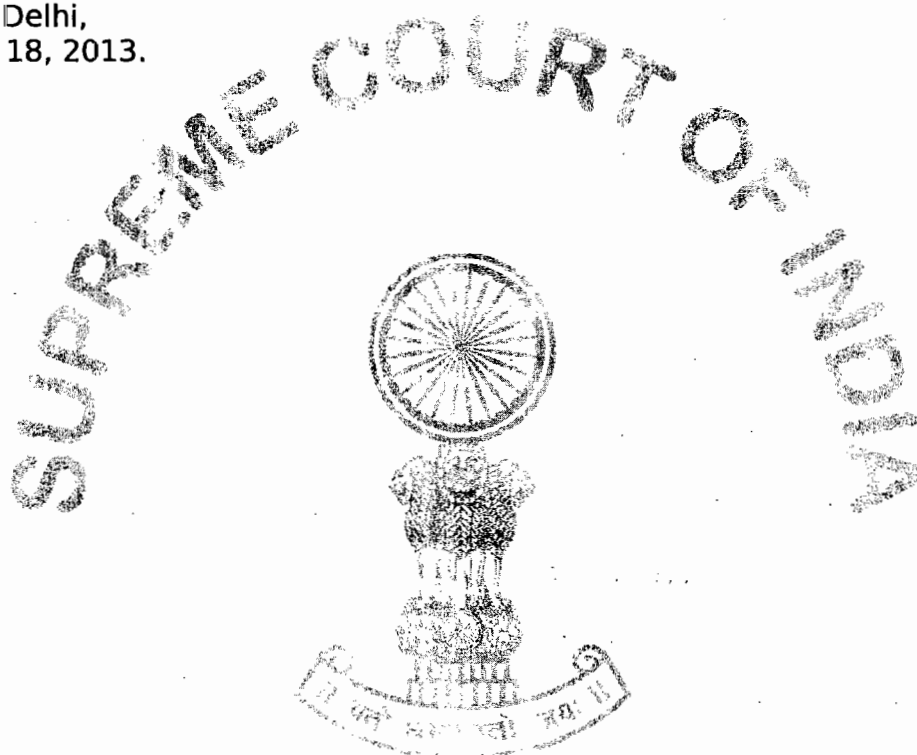
JUDGMENT

25. After giving our full consideration on the matter, we do not find any error in the impugned order passed by the High Court. Hence, these appeals have no merit and are accordingly dismissed. No order as to costs.

.....J.
(P. Sathasivam)

New Delhi,
April 18, 2013.

.....J.
(M.Y. Eqbal)



JUDGMENT

IN THE HIGH COURT OF DELHI AT NEW DELHI

**SUBJECT : Section 9 of the Public Premises
(Eviction of Unauthorised Occupants) Act, 1971**

Writ Petition (C) No.2564/1989

Reserved on : 23.08.2007

Date of decision : 05.10.2007

**IN THE MATTER OF :
MADHUKAR VINAYAK BHIDE (DECEASED)
THROUGH LEGAL HEIRS** petitioner

**through : Mr.Sanjeev Sachdeva and
Mr.Preet Pal Singh, Advocates**

Versus

LIFE INSURANCE CORPORATION OF INDIA & ORS.

through : Mr. Rajiv K.Ghawana, Advocate

A N D

Writ Petition (C) No. 2825/2000

**IN THE MATTER OF :
LIFE INSURANCE CORPORATION OF INDIA & ORS. Petitioner**

through : Mr. Rajiv K.Ghawana, Advocate

Versus

**MADHUKAR VINAYAK BHIDE (DECEASED)
THROUGH LEGAL HEIRS & ORS.**

**through : Mr.Sanjeev Sachdeva and
Mr.Preet Pal Singh, Advocates
for respondent No.1.**

HIMA KOHLI, J.

1. These writ petitions are taken up for final hearing and disposal by passing a common judgment and order, as counsels for the parties have stated that the parties are common in both the proceedings and the facts of the cases are the same. As the genesis of the dispute between the parties arose in the proceedings which culminated in the filing of WP(C) No.2825/2000 by the Life Insurance Corporation of India, the facts of the said case are taken note of.

2. The challenge has been made by the petitioner, Life Insurance Corporation of India (hereinafter referred to as 'the petitioner Corporation') in WP(C) No.2825/2000, to the judgment dated 17th January, 2000 passed by the Additional District Judge allowing the appeal of respondent No.1 filed under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the PP Act') and setting aside the order dated 31st January, 1998 passed by the Estate Officer directing respondent No.1 to pay damages at the rate of Rs.3,239/- per month under Section 7 of the PP Act with effect from 1st April, 1988 to 3rd April, 1992 in respect of staff quarter No.7, H-51, Lakshmi Insurance Building, Connaught Circus, New Delhi.

3. The undisputed facts of the case are that on 24th July, 1981, respondent No.1 who was an employee of the petitioner Corporation, was allotted staff quarter No.7, H-51, Lakshmi Insurance Building, Connaught Circus, New Delhi at a monthly licence fee of Rs.215/-. Respondent No.1 ceased to be in the service of the petitioner Corporation with effect from 1st January, 1988. On 12th March, 1988, the petitioner Corporation served upon respondent No.1 a legal notice terminating the leave and licence agreement in respect of the said staff quarter with effect from 1st January, 1988. At the same time, respondent No.1 was called upon to pay damages @ Rs.21.45 per day with effect from 1st January, 1988 till the date respondent No.1 handed over vacant possession of the staff quarter to the petitioner Corporation, as also paid the electricity and water charges on actual basis.

4. While issuing the aforesaid notice, the petitioner Corporation also withheld the retirement benefits that accrued in favour of respondent No.1 in terms of clause 4 of the agreement executed by respondent No.1 which entitled the petitioner Corporation to withhold the terminal benefits payable to an employee under the Staff Regulations, without any liability upon the petitioner Corporation to pay any

compensation by way of interest or otherwise for such a withholding in the event of failure on the part of respondent No.1 to deliver possession of the premises on determination or termination of the licence or service for any reason whatsoever.

5. On 15th June, 1988, the petitioner Corporation served another legal notice upon respondent No.1 stating inter alia that as respondent No.1 had failed to hand over vacant possession of the premises to the petitioner Corporation, he was liable to pay damages @ Rs.3,239/- per month with effect from 1st April, 1988, within 15 days from the date of receipt of the notice. Even thereafter when the respondent No.1 did not vacate the premises, the petitioner Corporation invoked the PP Act and approached the Estate Officer by filing an appropriate application.

6. The Estate Officer issued a notice to show cause to respondent No.1 under Section 4 read with Section 7 (3) of the PP Act. On 8th November, 1989, the Estate Officer passed an order under Section 5(1) of the PP Act holding that respondent No.1 was in unauthorized occupation of the staff quarter with effect from 1st January, 1988 and that the petitioner Corporation was entitled to get him evicted and further directed respondent No.1 to hand over vacant and peaceful possession of the staff quarter to the petitioner Corporation within 15 days from the date of receipt of the said order. The Estate Officer also passed a separate order dated 8th November, 1989 on the application filed by the petitioner Corporation under Section 7(2) and 7(2A) of the PP Act assessing the damages payable by respondent No.1 at Rs.56,816.95 paise upto 30th September, 1989. Respondent No.1 was also held liable to pay further damages @ Rs.3,239/- per month along with water and electricity charges on actual basis. The aforesaid amount was directed to be paid by respondent No.1 along with interest @ 10% p.a. to be calculated on the amount outstanding as on 4th August, 1988 and on each month's damages as it fell due, from the due date till the date of payment.

7. Aggrieved by the aforementioned order passed by the Estate Officer, respondent No.1 preferred an appeal before the Additional District Judge, Delhi on 7th December, 1989. An injunction was granted in favour of respondent No.1 staying his eviction from the staff quarter. On 21st January, 1992, the said appeal was dismissed in default on account of the non-appearance of the respondent No.1.

8. On 27th March, 1992, respondent No.1 filed an application before the Additional District Judge for restoration of the appeal in respect of both the orders passed by the Estate Officer. However, as there was no stay operating in favour of respondent No.1 thereafter and possession of the premises was taken over by the petitioner Corporation from respondent No.1 on 4th April, 1992, on 31st March,

1993, he withdrew his appeal against the order of eviction dated 8th November, 1989 passed by the Estate Officer. Thus the appeal of respondent No.1 against the order dated 8th November, 1989 passed by the Estate Officer assessing damages was restored and decided by the Additional District Judge vide order dated 3rd June, 1997, by which the case was directed to be remanded back to the Estate Officer for re-assessment of damages as per law. The Additional District Judge disposed of the appeal while holding as below:

“...Without expressing any opinion on the guidelines of the LIC referred before me and in view of the submissions made by the learned counsel for the parties, the case is remanded back to the Estate Officer for reassessment of damages which the appellant is liable to pay for the period of his overstay in the premises in question. Estate Officer will be entitled to take into account the evidence which is already there on record, on the aspect of the damages in the light of the guidelines of LIC regarding quantification of damages, to be charged from an employee of the LIC for the period of his overstay in the premises after the retirement. In the facts and circumstances of the case, the impugned order in so far as it relates to recovery of damages is concerned is quashed and the case is sent back to the E.O. for reassessment of damages as per law...”

9. As a result of the aforementioned order passed by the Additional District Judge, a second round of litigation took place. The matter was remanded back to the Estate Officer who passed an order dated 31st January, 1998 directing respondent No.1 to pay damages @ Rs.3,239/- per month with effect from 1st April, 1988 to 3rd April, 1992 totalling to Rs. 1,61,073.18. While so deciding, the Estate Officer held that the Circular dated 28th June, 1985 was not applicable to respondent No.1 and awarded damages at the same rate as imposed by the earlier order dated 8th November, 1989. After making adjustment of Rs.13,027.80 received by the petitioner Corporation from the respondent No.1, an amount of Rs.1,48,045.38 was held to be due and payable by the respondent No.1 to the petitioner Corporation. Interest on the aforesaid amount was however not awarded by the Estate Officer for the reason that the petitioner Corporation had withheld the retiral dues of the respondent No.1 and adjustment of the damages awarded had to be made by the petitioner Corporation from the said amount.

10. A third round of litigation took place when the respondent No.1 assailed the aforesaid order dated 31st January, 1998 by filing an appeal before the Additional District Judge, Delhi under Section 9 of the PP Act. After hearing the counsels for the parties, the Additional District Judge came to the conclusion that the Circular dated 28th June, 1985, clause 10 whereof stipulated that in all cases of overstay beyond one month from the end of the month of retirement,

damages/mesne profits should be recovered @ three times the standard licence fee calculated at 3 1/2% net return basis for the entire period of overstay from the date of retirement, was applicable to the facts of the present case. It was further held that the said Circular ought to have been considered by the Estate Officer under Rule 8(e) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter referred to as 'the PP Rules') which mandates that in assessing the damages for unauthorized use and occupation of any public premises, the Estate Officer shall take into consideration "any other matter relevant for the purpose of assessing the damages". Thus by applying the Circular of the petitioner Corporation, the damages payable by respondent No.1 were assessed @ Rs.21.45 per day, and respondent No.1 was directed to deposit the said amount for the period from 1st January, 1988 to 4th April, 1992 within one month from the date of the order and further directed to pay interest @ 12% p.a. from the date of the amount falling due till its recovery. The petitioner Corporation was directed to adjust the aforesaid amount payable by the respondent No.1 against his retirement benefits withheld by the petitioner Corporation, without any interest being payable on the amounts so adjusted.

11. Aggrieved by the aforementioned order dated 17th January, 2000, the petitioner Corporation filed the present writ petition in which at the time of issuing notice, the operation of the impugned judgment dated 17th January, 2000 was stayed.

12. It is relevant to note that respondent No.1 had also preferred a writ petition being WP(C) No.2564/1989 praying inter alia for directions to the petitioner Corporation herein for release of his retirement dues with other benefits along with interest and for quashing the proceedings under the PP Act. Vide order dated 7th September, 1989, notice in the said writ petition was restricted to the prayer for release of the retiral benefits. It is undisputed that the retiral benefits of the respondent No.1 totalled to Rs.2,08,998.83 and that during the pendency of the said writ petition, in October, 1992, the petitioner Corporation forwarded a cheque dated 21st October, 1992 to the respondent No.1 for a sum of Rs.28,088.14 stated to be payable towards his balance retiral dues after deducting a sum of Rs.1,80,910.69 from his actual retiral dues, on account of recovery towards damages, interest etc. upto 3rd April, 1992, the date on which possession of the staff quarter was taken from the respondent No.1. (Rs.1,93,938.49 being the actual amount claimed to be due to the petitioner Corporation, out of which credit for a sum of Rs.13,027.80 was given to the respondent No.1 as the said amount had already been received by the petitioner Corporation from the respondent No.1, but was kept in a suspense account). It is also a matter of record that though respondent No.1 received the said cheque for Rs.28,088.14, he did not encash the same. The aforesaid writ petition is also pending adjudication and is being decided along with the present petition.

During the pendency of the present proceedings, the respondent No.1 expired on 17th February, 2000 and his legal heirs were duly brought on the record.

13. Counsel for the petitioner Corporation submitted that the impugned order is liable to be set aside on the ground that the Additional District Judge ought not to have taken into consideration the Circular dated 28th June, 1985 issued by the Petitioner Corporation and relied upon by respondent No.1, the same being an administrative Circular and not binding upon the Estate Officer to assess the damages in terms thereof, for the reason that the PP Act lays down a procedure under Rule 8 of the Rules for assessing the damages and the same had to be followed by the Estate Officer. It was further submitted that once the petitioner Corporation had taken recourse to the provisions of the PP Act, then the procedure laid down under the Act and the Rules had to be strictly followed and damages could not be assessed on the basis of the Circular for the reason that the said Circular did not specify as to what would be the market rent which the respondent No.1 was liable to pay. Thus, according to the petitioner Corporation, the Additional District Judge fell into error by taking into consideration the said Circular for assessing the damages payable by respondent No.1. In support of the said contention, counsel for the petitioner Corporation relied on a judgment rendered by this court in the case of Uttam Prakash Bansal & Ors. Vs. Life Insurance Corporation of India & Ors. reported as 100 (2002) DLT 497 (DB), to state that the Circulars/guidelines do not stand as a bar in initiation of proceedings in view of the clear statutory provisions under the Act.

14. It was further argued on behalf of the petitioner Corporation that if at all the Additional District Judge could have considered the said Circular, then he ought to have also taken into consideration the subsequent Circulars dated 30th June, 1989 and 14th July, 1990 by which the said Circular dated 28th July, 1985 was modified to the extent that it was stipulated therein that the damages should not exceed the market rent. It was also stated that clause 6 of the Circular dated 28th June, 1985 which entitled the petitioner Corporation to claim damages as mentioned in the third notice, was overlooked while passing the impugned order. It was urged by the counsel for the petitioner Corporation that the Additional District Judge failed to appreciate that if the damages were to be assessed on the basis of the Circular dated 28th June, 1985, then the same would result in damages being levied at a rate much less than the market rent, i.e. @ only three times the licence fee, which would result in a situation wherein an employee in service would end up paying far more for a staff quarter as against a retired employee.

15. Lastly, it was contended that the PP Act prescribes a procedure for evicting unauthorized occupants from public premises and Rule 8 of the Rules,

framed under Section 18 of the PP Act mandates the Estate Officer to take into consideration certain requirements stipulated therein in assessing damages for unauthorized use and occupation of any public premises. He urged that clause (e) of Rule 8 is to be interpreted by applying the doctrine of ejusdem generis, and as the said clause does not refer to any administrative Circulars, therefore, it can be interpreted only in the context of clauses (a) to (d) of Rule 8 and thus damages could be assessed only on the basis of the Act and the Rules and not on the basis of administrative Circulars which have no binding effect on the Estate officer.

16. Counsel for respondent No.1, on the other hand, submitted that the petitioner Corporation cannot be permitted to wriggle out of its Circular dated 28th June, 1985 and the Additional District Judge was justified in allowing the appeal of respondent No.1 as the Circular was applicable to all the employees of the petitioner Corporation. It was submitted that if there already existed a rule, the same will apply and if there is an absence or vacuum in the Rules, then the executive instructions, guidelines, administrative orders etc. will cover the field and hence in this context, the Circular issued by the petitioner Corporation is of relevance as it is all inclusive in nature and takes into consideration even the situations regarding which the Act invoked by the petitioner Corporation, is silent. Counsel for respondent No.1 sought to draw support from the following judgments to state that the executive instructions are held to be supplemental to statutory Rules and were rightly taken into consideration by the Additional District Judge while passing the the impugned order:

(i) Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare and others, (1999) 8 SCC 99.

(ii) N.K.Pankajakshan Nair Vs. P.V.Jayaraj and others, (2002) 10 SCC 396.

(iii) Bimlesh Tanwar Vs. State of Haryana and others, (2003) 5 SCC 604.

17. It was further submitted that the other Circulars dated 30th June, 1989 and 14th July, 1990 are not of any relevance inasmuch as the same were neither produced nor relied upon by the petitioner Corporation before the court below and in fact, the Circulars were issued only after the retirement of respondent No.1, i.e. after 31st December, 1987.

18. I have heard the rival contentions of the counsels for the parties which pivot around the applicability of the Circular dated 28th June, 1985 issued by the petitioner Corporation, as also the interpretation of Rule 8 of the Rules. Before proceeding with the case, it will be appropriate to refer to the relevant provisions of the Rules and Act. Section 18 of the PP Act empowers the Central Government to

make rules for carrying out the purposes of the Act. Section 18 (2) (e) states as below:

“18. Power to make rules.

(1)xxx

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

xxx

(e) the manner in which damages for unauthorised occupation may be assessed and the principles which may be taken into account in assessing such damages.”

19. In the terms of the aforesaid legislative provision, the PP Rules were drafted and notified by the Central Government. Rule 8 which is relevant for the purposes of deciding the present case deals with assessment of damages and states as below:

“8. Assessment of damages- In assessing damages for unauthorised use and occupation of any public premises the estate officer shall take into consideration the following matter, namely:-

(a) the purpose and the period for which the public premises were in unauthorised occupation;

(b) the nature, size and standard of the accommodation available in such premises;

(c) the rent that would have been realised if the premises had been let rent for the period of unauthorised occupation to a private person;

(d) any damage done to the premises during the period of unauthorised occupation;

(e) any other matter relevant for the purpose of assessing the damages.”

20. Coming to the Circular dated 28th June, 1985 issued by the petitioner Corporation, the same is entitled ‘Vacation of staff quarters on retirement’. The said Circular was issued by the Executive Director(P) of the petitioner Corporation, in supercession of the earlier instructions and was made effective from 1st July, 1985.

The said Circular envisages various situations that would arise upon an employee occupying staff quarters becoming due for retirement. The said Circular envisages issuance of three notices to a retiring employee, the first one being three months before his retirement. If he does not vacate the staff quarters on the date of his retirement, the second notice is directed to be issued within a week of his retirement. If after one month from the end of the month in which the employee retires, he does not vacate the staff quarter, a third notice is directed to be issued to him. If an employee fails to vacate the staff quarter even after the third notice, then the Circular proposes the following action:-

"6. If the employee fails to vacate the premises inspite of the third notice steps may be taken to obtain vacant possession of the premises, while taking such legal action a prayer may be included claiming damages/mesne profits as per notice in addition to the prayer for ejectment. If however, before filing the suits there is a settlement, such settlement shall be only by charging damages/mesne profits as indicated in para 10.

The following steps be taken in addition to the above in order to force the employees to vacate the quarters:

xxx

7. Payment of retirement benefits shall be withheld to the extent specified below:

a) Provident Fund-The entire Provident Fund Contribution of the Corporation in the employee's account.

b) Gratuity & Additional Gratuity: Gratuity payable to Class-II, III and IV employees under the Payment of Gratuity Act, 1972 shall not be withheld even though the employee or his family has not vacated the Staff Quarters. However, if the Gratuity payable under the (Staff) Regulations is more than that admissible under the Act, such excess amount shall be withheld. In the case of Class-I Officers, the entire gratuity shall be withheld.

c) Entire cash benefit in lieu of unutilised Privilege leave.

8. Simultaneously, efforts should be made to obtain vacant possession of the quarters by taking advantage of the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 wherever PP Act is applicable.

9. xxx

10. In all cases of overstayal beyond one month from the end of the month of retirement, damages/mesne profits should be recovered @ 3 times standard licence fee calculated at 3 1/2% net return basis for the entire period of overstayal; from the date of retirement."

21. A perusal of the aforesaid Circular shows that para 10 thereof which stipulates levy of damages/mesne profits to be recovered @ three times the standard licence fee calculated at 3 1/2% net return basis for the entire period of overstay from the date of retirement, comes into play only in the circumstances as envisaged in para 6 of the Circular. The last line of para 6 of the Circular makes it evident that only in a case where there is a settlement with the employee before initiation of legal proceedings, a settlement could be arrived at by charging the damages/mesne profits as indicated in para 10. However, the said Circular does not foreclose the right of the petitioner Corporation to claim damages at market rate from an employee who fails to vacate the premises inspite of institution of legal proceedings against him.

22. The facts of the present case reveal that respondent No.1 retired from service on 1st January, 1988. As he did not vacate the staff quarter even after expiry of two months from the date of his retirement, a notice for vacation of the staff quarter was served upon him on 12th March, 1988. But he did not comply. As a result, a second notice for vacation of the staff quarter was served on respondent No.1 on 15th June, 1988, after waiting for a further period of three months. As respondent No.1 failed to vacate the staff quarter despite two notices issued to him, the petitioner Corporation had to initiate legal proceedings against him under the PP Act for recovery of possession as well as for recovery of damages for unauthorized use and occupation of the staff quarters under his occupation. During the pendency of the proceedings before the Estate Officer, the respondent No.1 wrote a letter on 18th November, 1988 to the Estate Officer stating that he intended to vacate the staff quarter by the end of May 1989. However, he did not abide by the said undertaking and the records reveal that respondent No.1 remained in occupation of the staff quarter till 4th April, 1992 when possession of the premises was taken over by the petitioner Corporation from respondent No.1 after the appeal filed by him against the eviction order passed against him by the Estate officer, was dismissed in default on 21st January, 1992. Thus, respondent No.1 unauthorizedly and illegally remained in possession and occupation of the staff quarter from 1st January, 1988 to 4th April, 1992, i.e. for a period of four years and three months.

23. The contention of counsel for the respondent No.1 that his case is covered by the terms and conditions of the Circular dated 28th June, 1985 issued by

the petitioner Corporation is not acceptable for the reason that para 10 thereof is applicable only in circumstances where prior to initiation of litigation, the petitioner Corporation enters into a settlement with a retired employee. In the present case, the period of overstay of respondent No.1 runs into more than four years. To arrive at a conclusion that even in circumstances where a retired employee fails to vacate the staff quarter for such a long duration and instead compels the employer to seek its legal remedies by invoking the provisions of the PP Act, the Circular dated 28th June, 1985 alone can be relied upon for the purposes of assessing the damages, shall make a mockery of the entire process and amount to putting a premium on the illegal action of the respondent No.1 in remaining in unauthorized occupation of a public premises for such a long duration, resulting in depriving another employee of the petitioner Corporation of his rightful entitlement to allotment of the staff quarters. Any such interpretation given to paras 6 and 10 of the Circular shall amount to permitting the respondent No.1 to have his cake and eat it too.

24. The aim and object of legislating the PP Act was to ensure that the facility of providing residential accommodation to the employees is not misused by them after their retirement and instead of compelling the authorities to have the public premises evicted by taking recourse to filing a civil suit which is a long drawn and time consuming procedure, the PP Act was legislated. Rule 8 of the PP Rules lays down the guidelines to be taken into consideration by the Estate Officer in assessing damages for unauthorized use and occupation of any public premises. The said Rule also permits the Estate Officer to assess the damages by taking into consideration the rent that would have been realised if the premises had been let out for the period of unauthorized occupation to a private person, in other words, the market rate that the premises would have fetched in ordinary course.

25. Here is a case where the respondent No.1 after retiring from the service of the petitioner Corporation did not vacate the staff quarter under his occupation for a long period of over four years and at the same time, has taken a plea of being exempted from paying damages for the period of unauthorized occupation at market rate by claiming to be governed by the Circular dated 28th June, 1985 which on the face of it cannot be invoked by him. It is not a case where the respondent No.1 entered into any settlement with the petitioner Corporation before the latter initiated legal proceedings against him. Instead, respondent No.1 resisted vacating the staff quarter at every step and the same has resulted in a prolonged litigation spanning almost two decades, during which period, the respondent no.1 has expired.

26. Had it been a case where the respondent No.1 had vacated the staff quarter within the time stipulated under the Circular in question, i.e., within one

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26. Had it been a case where the respondent No.1 had vacated the staff quarter within the time stipulated under the Circular in question, i.e., within one

week of his retirement or within one month thereafter or beyond a period of one month but still within a reasonable period thereafter, the said Circular would have become applicable. But when admittedly the respondent No.1 did not vacate the staff quarters within the stipulated time or even after service of notices issued to him and the petitioner Corporation had to resort to legal remedies by invoking the provisions of the PP Act, respondent No.1 cannot be heard to state that the Estate Officer was under an obligation to charge only @ three times the standard licence fee calculated at 3 1/2% net return basis for the entire period of overstay. Counsel for the petitioner Corporation is justified in stating that if damages were assessed on the basis of the guidelines contained in para 10 of the Circular dated 28th June, 1985 which is not even attracted to a case like the present one, then the same would be far less than the market rent and the net result would be that no employee of the petitioner Corporation would vacate the premises upon retirement and instead, continue to retain the same unauthorizedly by paying charges far less than the market rent and even far less than the charges payable by an employee in the service of the petitioner Corporation, as compensation payable towards retaining the staff quarter. Such an interpretation to the Circular would also jeopardise the interest of the rightful claimants waiting in the queue for allotment of a staff quarter, for the reason that levy of damages at such a rate even after initiation of legal proceedings would conversely act as an incentive to retiring/retired employees to cling on to the staff quarters instead of vacating the same in time.

27. For the reasons stated hereinabove, this court is unable to agree with the observations made in the impugned judgment to the effect that the Circular does not prescribe different procedure to be adopted by the departmental officers on the one hand and the Estate Officer or the courts on the other hand. As noted above, para 6 of the Circular makes a clear cut distinction between the pre-litigation scenario and the post-litigation scenario and para 10 becomes applicable only in cases envisaged in para 6, i.e., where litigation has not been initiated by the petitioner Corporation and a settlement takes place with an employee.

28. For the aforesaid reasons, the impugned judgment dated 17th January, 2000 is not found to be sustainable and is set aside. As the impugned judgment is being set aside on the ground that the Circular dated 28th June, 1985 is not applicable to the facts and circumstances of the present case, this court need not return any finding on the issue as to whether the Estate Officer is barred from examining and taking into consideration any Circular or other administrative instructions/guidelines issued by the petitioner Corporation, under clause (e) of Rule 8 of the PP Rules while assessing damages for unauthorized occupation of public premises under the

PP Act; nor is it considered necessary to decide the plea of estoppel against statute as raised by the petitioner Corporation.

29. In view of the fact that the impugned judgment is set aside, the petitioner Corporation is held entitled to receive damages to the tune of Rs. 1,61,073.18 from the respondent No.1 in terms of the order of the Estate Officer dated 31st January, 1998. As the retiral dues of the respondent No.1 amounting to Rs.2,08,998.83 were withheld by the petitioner Corporation in terms of Clause 4 of the license agreement executed by the respondent no.1, after deducting an amount of Rs.1,61,073.18 payable towards damages for unauthorised occupation of the staff quarter, as assessed by the Estate Officer, a balance sum of Rs.47,925.65 was refundable to the respondent No.1 as on 3rd April, 1992, the date on which he was evicted from the staff quarter. After giving credit of Rs.13,027.00 forwarded by the respondent no.1 and lying deposited with the petitioner corporation in a suspense account, the Estate Officer finally arrived at the figure of Rs.1,48,045.38 assessed as damages payable by the respondent no.1 to the petitioner corporation for unauthorized occupation of the staff quarters from 1st April, 1988 to 3rd April, 1992, without levy of interest. Thus, after deduction of Rs.1,48,045.38 from the retiral dues of Rs.2,08,998.83, the respondent No.1 was entitled to receive back the balance retirement dues of Rs.60,953.45 from the petitioner Corporation as on 4th April, 1992. However, in October 1992, the petitioner Corporation claimed a sum of Rs.1,93,938.49 from the respondent no.1 and as per its calculations, forwarded a cheque for Rs.28,088.14 dated 21st October, 1992 to him stated to be the balance amount payable after making deductions, which cheque remained unencashed by the respondent No.1.

30. In the aforesaid circumstances, the petitioner Corporation is directed to refund a sum of Rs.60,953.45 to the respondent No.1 on account of the balance retirement dues along with interest payable @ 9% p.a. with effect from 4th April, 1992 till 21st October, 1992. Interest shall, however, be payable by the petitioner Corporation @ 9% p.a. on Rs.32,865.31 (Rs.60,953.45 less Rs.28,088.14) with effect from 22nd October, 1992 till the amount is received by the legal heirs of the respondent No.1.

31. Both the writ petitions are disposed of in terms of the aforesaid judgment. No orders as to costs.

Sd/-
(HIMA KOHLI)
JUDGE

IN THE HIGH COURT OF DELHI AT NEW DELHI
SUBJECT : THE PUBLIC PREMISES (EVICTION OF UNAUTHORIZED
OCCUPANTS) ACT, 1971

Date of decision: 16th March, 2012

LPA No.218/2011

LIFE INSURANCE CORPORATION OF
INDIA & ANR

....Appellants

Through: Mr. Ravinder Sethi, Sr. Adv. with Mr. Gaurav Mahajan, Mr.
M.L. Mahajan & Mr. Puneet Sharma, Advs.

Versus

KAMLA BHARGAVA & ORS.
Through: Mr. L.K. Singh, Adv.

..... Respondents

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 20th January, 2011 of the Learned Single Judge allowing W.P.(C) No.12718/2009 preferred by the respondents. The said writ petition was filed by the respondents impugning the order dated 21st August, 2009 of the Learned Addl. District Judge exercising powers under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and dismissing the appeal preferred by the respondents against the order dated 28th January, 2004 of the Estate Officer of their eviction from Flat No.8, Tropical Building, H-Block, Connaught Circus, New Delhi. The respondents in pursuance to the said eviction order had been dispossessed from the premises on 21st October, 2009. Accordingly the Learned Single Judge also directed the appellant LIC to put back the respondents into possession of the said premises.

2. Notice of this appeal was issued and the operation of the impugned judgment stayed. The counsels have been heard.

3. The husband and father respectively of the respondents was a tenant in the aforesaid premises under the appellant LIC; he died on 18th April, 1983; the appellant LIC vide notice dated 12th /27th January, 2001 under Section 106 of the Transfer of Property Act, 1882 terminated the tenancy of the respondents and initiated proceedings for their eviction under PP Act. As aforesaid an order dated 28th January, 2004 of eviction was passed by the Estate Officer. The Estate Officer also held the respondents liable for damages @ `25,887.50p per month w.e.f. 1st March, 2001 till vacation.

4. It was the plea of the respondents in appeal before the Learned Addl. District Judge that they had not been served with any notice of the proceedings; that the wife of the respondent no.2 Shri Vikramaditya Bhargava, who initially appeared before the Estate Officer had strained relations with the respondents and was not authorized to so appear and had also subsequently stopped appearing resulting in the ex parte order of eviction; that the respondents had in the meanwhile approached the Rent Negotiation Committee of the LIC for accepting them as tenants on fresh terms and which had been accepted; that the tenancy of the respondents thus stood renewed for a period of ten years w.e.f. 1st March, 2002; that the respondents had moved an application before the Estate Officer disclosing the said fact but the Estate Officer erred in passing the order of eviction and damages.

5. The Learned Addl. District Judge found that the tenancy of the respondents had been duly terminated; that the respondents were duly served with the notice of the proceedings and the wife namely Smt. Nutan Bhargava of the respondent no.2 had appeared on a number of dates before the Estate Officer; that similarly the Advocate who represented the respondents before the Learned Addl. District Judge had also appeared before the Estate Officer but had subsequently stopped appearing which had resulted in the ex parte orders of eviction and damages; that though there were some negotiations but no fresh tenancy was ever created between the respondents and the appellant LIC and the status of the respondents remained that of unauthorized occupants after termination of their tenancy. Accordingly the appeal against the eviction order was dismissed but the rate of damages was reduced from that of `25,887.50p per month awarded by the Estate Officer to

₹4,500/- per month which had been agreed during the discussions for renewal of lease.

6. The Learned Single Judge has set aside the order of the Learned Addl. District Judge for the reason that the appellant LIC having agreed to renew the tenancy of the respondents w.e.f. 1st March, 2002 to 28th March, 2012 and the respondents having made payments thereafter at the said rate, could not have evicted the respondents notwithstanding the fact that no fresh lease deed as was contemplated to be executed had been executed. It was further held that once the appellant LIC had taken a decision to regularize the tenancy of the respondents on revised rates of rent, then in all fairness the appellant LIC should have dropped the proceedings initiated by it under the PP Act. The Learned Single Judge further held that non execution of the fresh lease deed could not nullify the decision of the Rent Negotiation Committee more so when it was fully accepted and acted upon by the respondents. Thus the respondents who had been evicted on 21st October, 2009, were directed to be put back into possession.

7. The senior counsel for the appellant LIC has urged that the negotiations with the respondents were 'without prejudice'. Attention is invited to the reply dated 25th November, 2003 of the appellant LIC to the application of the respondents before the Estate Officer and wherein also the appellant LIC had stated that the tenancy was never renewed and the amount paid by the respondents had been kept in suspense account to be adjusted against damages after adjudication of the proceedings.

8. We may notice that the Learned Single Judge has held the proceedings under the PP Act to be bad also for the reason of the guidelines dated 30th May, 2002 issued by the Ministry of Urban Development & Poverty Alleviation. In fact it was for the said reason that this appeal was taken up for hearing along with other matters concerning the said guidelines. However the counsel for the respondents during the hearing has stated that he is not relying on the guidelines and is supporting the judgment of the Learned Single Judge on the eviction being in contravention of the decision of the appellant LIC to renew the lease of the respondents. We, for this reason are writing a separate judgment in this appeal and without adverting to the aspect of guidelines, which issue is being dealt with in the other matters.

9. What has immediately struck us is that even as per the judgment of the Learned Single Judge, the right of the respondents to remain in the premises is till 28th March, 2012 only. The arguments in the appeal were heard on 16th February, 2012. We had as such asked the counsel for the respondents as to what purpose would be served even if the judgment of the Learned Single Judge were to be upheld and in accordance therewith the respondents were to be put back into the possession of the premises, in as much as, as per their own case they are entitled to remain therein only till 28th March, 2012 i.e. barely for a month. The counsel for the respondents also does not dispute/controvert that the right of the respondents to remain in the premises is till 28th March, 2012 only. He has however contended that upon being so put into possession, the appellant LIC to take back possession from them would be required to again terminate the tenancy and to initiate proceedings for eviction and which the respondents would have a right to contest on the grounds as may then be available to them.

10. We are unable to appreciate the said attitude. None is entitled to take advantage of the inherent delays in legal proceedings. The Supreme Court recently in Indian Council for Enviro-Legal Action Vs. UOI (2011) 8 SCC 161 has reiterated that no litigant can derive any benefit from the mere pendency of a case in a Court of law and litigation cannot be permitted to turn into a fruitful industry so that unscrupulous litigants are encouraged to invoke the jurisdiction of the Court. It was also held that litigation cannot be permitted to confer any advantage on a party by delayed action of Courts. The respondents cannot thus be heard to urge that though under the law they are entitled to remain in the premises till 28th March, 2012 only but are entitled to delay delivery of possession thereafter taking advantage of the delays in the legal proceedings.

11. The counsel for the respondents has also urged that the appellant LIC has by evicting the respondents from the premises on 21st October, 2009 deprived the respondents of use thereof for about 2½ years till 28th March, 2012.

12. The remedy if any of the respondents therefor would be for damages. We are also constrained to observe that what was for adjudication in the appeal under Section 9 of the PP Act and in writ petition in exercise of powers of judicial review of judgment therein, was the validity of the eviction order and not refusal of the appellant LIC to grant fresh lease to the respondents. The respondents were well aware, if not earlier at least from the

reply dated 25th November, 2003 (supra) of the appellant LIC before the Estate Officer, that the appellant LIC was refusing to honour the alleged agreement of renewal of lease. The remedy of the respondents, if aggrieved therefrom, was to challenge the said decision or to seek specific performance of the agreement claimed by them of renewal of lease. The respondents chose not to seek any such relief. No error can be found in the order of the Learned Addl. District Judge in holding that in the absence of any fresh lease, the order of eviction could not be faulted with. The Learned Single Judge in exercise of powers of judicial review over the order of the Addl. District Judge has travelled beyond the jurisdiction in judging the actions of the appellant LIC of non-renewal of lease and which were not subject matter of the proceedings before the Estate Officer. However we refrain ourselves from commenting further on the said aspect and clarify that these observations are not intended to influence the claim if any preferred by the respondents for damages as aforesaid against the appellant LIC.

13. We accordingly allow this appeal and set aside the judgment dated 20th January, 2011; resultantly the writ petition filed by the respondents is dismissed. However in the facts, we do not impose any costs.

Sd/-
RAJIV SAHAI ENDLAW, J

Sd/-
ACTING CHIEF JUSTICE

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : PP ACT

Date of decision: 23rd March, 2012

LPA No.977/2011

LIFE INSURANCE CORPORATION OF INDIA Appellant
Through: Mr. Mohinder Singh, Adv.

Versus

DAMYANTI VERMA (DECD.)
THROUGH LRS Respondents
Through: Mr. Ahmad, Adv.

AND

LPA No.978/2011

LIFE INSURANCE CORPORATION OF INDIA Appellant
Through: Mr. Mohinder Singh, Adv.

Versus

DAMYANTI VERMA (DECD.)
THROUGH LRS Respondents
Through: Mr. Ahmad, Adv.

AND

LPA No.979/2011

LIFE INSURANCE CORPORATION OF INDIA Appellant
Through: Mr. Mohinder Singh, Adv.

Versus

DAMYANTI VERMA (DECD.)
THROUGH LRS Respondents
Through: Mr. Ahmad, Adv.

AND

LPA No.980/2011

LIFE INSURANCE CORPORATION OF INDIA Appellant

Through: Mr. Mohinder Singh, Adv.

Versus

DAMYANTI VERMA (DECD.)

THROUGH LRS

..... Respondents

Through: Mr. Ahmad, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

11. These Intra-Court appeals impugn the common judgment dated 25th July, 2011 of the learned Single Judge in W.P.(C) No. 4342/2007, W.P.(C) No. 4344/2007, W.P.(C) No. 13393/2009 & W.P.(C) No. 13628/2009 preferred by the respondents herein. Of the said four writ petitions, two i.e. W.P.(C) No. 4342/2007 and W.P.(C) No. 4344/2007 were filed impugning the common judgment dated 22nd May, 2007 of the learned District Judge [exercising powers under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971] and dismissing the appeals preferred by the respondents against the order dated 18th April, 2006 of the Estate Officer of eviction of the respondents from Flat No.14/12190 and Flat No.7/10181 on the first floor of Tropical Building, H- Block, Connaught Circus, New Delhi. The other two writ petitions i.e. W.P.(C) No. 13393/2009 and W.P.(C) No.13628/2009 were preferred assailing the common judgment dated 29th October, 2009 of the learned District Judge dismissing the appeal preferred by the respondents against the order dated 18th April, 2006 of the learned Estate Officer assessing damages/charges for unauthorized use and occupation of the said premises by the respondents.

2. The learned Single Judge has not found any error / fault in the orders of the Estate Officer or in the orders of the learned District Judge in appeals aforesaid. The learned Single Judge has however upheld the plea of the respondents that the proceedings initiated by the appellant against the respondents under the provisions of the PP Act were in contravention of guidelines contained in the Notification dated 30th May, 2002 of the Ministry of Urban Development, Govt. of India and hence allowed the writ petitions and set aside the orders of the Estate Officer and the learned District Judge.

3. The learned Single Judge has qua the said guidelines observed/held:-

- A. that similar guidelines were issued earlier also in the year 1992;
- B. that under the guidelines the provisions of the PP Act could be invoked only to seek eviction of totally unauthorized occupants or subleetees;
- C. that the guidelines do not permit resort to the provision of the PP Act by the Government instrumentalities, with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees where such premises were in occupation of original tenants;
- D. that the guidelines did not permit a person in occupation of any premises to be treated or declared as unauthorized merely on service of notice of determination of tenancy;
- E. that Section 21 of the Life Insurance Corporation Act, 1956 provides for the appellant, in the discharge of its functions under the Act being guided by such directions in matters of policy involving public interest, as the Central Government may give to it in writing;
- F. that the appellant LIC owing to Section 21 (supra) cannot take the plea of the guidelines being not binding on it;
- G. that no reason had been cited by the appellant as to why the guidelines should be ignored;
- H. that the predecessor of the respondent was an old tenant in the premises and the tenancy had devolved on the respondents on demise of their predecessor and the respondent were accepted as tenants by the appellant;
- I. that the respondents had not committed any kind of default for the appellant to determine their tenancy;
- J. that the appellant had not given any reason for determination of tenancy of the respondents and for seeking the eviction of the respondents;

K. that the appellant before seeking eviction from any of its premises is required to prove that it bona fide needs the said premises for its own use or for the use of its employees;

L. no such need had been established in the present case;

M. the Estate Officer has also not returned any finding of the premises from which eviction was sought being required by the appellant;

N. that every action of the appellant which is an instrumentality of the State must be fair, just and reasonable and not arbitrary, unfair unbridled or mala fide;

O. that thus the action of the appellant of seeking eviction of the respondents was not fair, honest, genuine and justified;

P. that the public bodies such as the appellant were permitted to secure periodic revision of rent in terms of the provision of the Rent Control Act;

4. The learned Single Judge has relied upon the judgment of the Division Bench of the Bombay High Court in *Nusli Neville Wadia vs. New India Assurance Co. Ltd* (2006) 3 MhLJ 713 upheld by the Supreme Court in the judgment in *New India Assurance Company Ltd. Vs. Nusli Neville Wadia* (2008) 3 SCC 279. Reliance was also placed on judgment of the Division Bench of Calcutta High Court in *Mitra Lina Pvt. Ltd. vs. Life Insurance Corporation of India* 1999(2) CLJ 457 holding the said guidelines to be binding on the LIC by virtue of Section 21 of the Act. Reliance was yet further placed on *Jamshed Hormusji Wadia vs Board of Trustees, Port of Mumbai* (2004)3SCC214 deprecating exorbitant increase in rent and holding the same as violative of Article 14 of the Constitution of India. The learned Single Judge also relied on his own judgment dated 20th January, 2011 in W.P.(C) No. 12718/2009 titled *Kamla Bhargava Vs. LIC of India* in this regard.

5. The appellant, before the learned Single Judge had relied on *Uttam Parkash Bansal Vs. LIC of India* 2002 (100) DLT 497 where a Division Bench of this Court had rejected the challenge to the eviction order under the PP Act in that case for the reason of the said guidelines, holding that having regard to the clear and ambiguous provisions of the statute i.e. the PP Act, not following the said guidelines cannot be raised as a defence. It was further held that while the guidelines had been issued only in the year 2002, the proceedings in that case under the PP Act had been initiated in the year 1976. The learned Single Judge though ordinarily bound by the dicta of the Division Bench however did not follow the same presumably owing to the judgments of the Division Benches of the Bombay and the Calcutta High

Court and the judgment of the Apex Court upholding the judgment of the Bombay High Court. The learned Single Judge though also noticed Syndicate Bank Vs. Ramachandran 2011 (1) SCALE 368 where the Supreme Court had observed that the said guidelines were not issued in exercise of any statutory power under the PP Act or any other statute and that the non-compliance of the guidelines could not deprive the public authority of the order of eviction, did not follow the same owing to the further observations of the Supreme Court in the said judgment that the same was not to be construed as laying down a proposition that the public sector undertakings and the financial institutions to which the guidelines were addressed could willfully ignore or violate the same.

6. We may notice that just like the position in Uttam Parkash Bansal(supra), the proceedings before the Estate Officer in the present case also had been initiated in or about the year 1997 i.e. prior to the issuance of the 2002 Guidelines.

7. The first argument of the appellant naturally is that the judgment of the learned Single Judge is liable to be set aside merely for the reason of being in defiance of the binding dicta of the Division Bench in Uttam Parkash Bansal. It is also the contention of the appellant that the learned Single Judge has misconstrued the dicta in Nusli Neville Wadia(supra). It is further argued that the respondents are the heirs of a deceased ex-employee of the appellant and have no right to continue in the premises.

8. The counsel for the respondents has argued (and also filed written synopsis of submissions) that the guidelines have statutory force and relies on another judgment of Division Bench of the Bombay High Court in Persis Kothawalla Vs. LIC 2004-BCR-4-610 in addition to the judgment of the Apex Court in Nusli Neville Wadia. It is further argued that the appellant harasses innocent, genuine and originally inducted tenants by misusing of powers under the PP Act.

9. We may notice that the judgment of the learned Single Judge in Kamla Bhargava (supra) has been set aside vide judgment dated 16th March, 2012 in an Intra-Court appeal, though on other grounds. We may further notice that this Court besides in Uttam Parkash Bansal, in L.D. Nayar & Sons Vs. Punjab National Bank 151 (2008) DLT 27 and in Heera Midha Vs. ITDC 2008 VII ADD 251 (and which were unfortunately not brought to the notice of the learned Single Judge) had also negatived the challenge to the

proceedings under the PP Act for the reason of the said guidelines holding that such guidelines are administrative in nature and cannot supplant, the power to invoke a speedy remedy to evict tenants whose arrangements ended long ago and to hold otherwise would not only tantamount to fettering statutory powers on patently insubstantial grounds, but place unwarranted disabilities on a plain misreading of the guidelines. Relying on *State of UP Vs. Daulat Ram Gupta* (2002) 4 SCC 98, *Dr. S.K. Kacker v. AIIMS* (1996) 10 SCC 734 and on *Managing Director ECIL, Hyderabad Vs. B. Karunakar* (1993) 4 SCC 727, it was held that guidelines can supplement not supplant the law and statutory provisions and that the power to issue guidelines cannot control the manner of use of statutory power or its discretion. The intra-court appeal, being LPA No.350/2008 in *L.D. Nayar & Sons* was also dismissed by a Division Bench of this Court vide judgment dated 29.07.2008.

10. In view of the judgment in *Heera Midha and L.D. Nayar & Sons* of Single Judges of this Court and of the Division Bench in *Uttam Parkash Bansal & L.D. Nayar & Sons*, the judgments to the contrary of the Division Bench of the Bombay and Calcutta High Courts were of no avail. What therefore remains to be seen is whether the learned Single Judge was correct in ignoring the said judgments of the own Court, for the reason of the dicta of the Supreme Court in *Nusli Neville Wadia*. We may, at the outset, notice that the controversy in *Nusli Neville Wadia* was as to who should begin to lead evidence in a proceeding under the PP Act. Though the submissions made and as recorded in the judgment do not show any argument to have been raised qua the guidelines but the same were nevertheless noticed by the Supreme Court. However the Supreme Court in the said judgment also held:-

“issuance of such guidelines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant.”

Having observed so, the Supreme Court hastened to add that the ultimate effect of the guidelines was not being finally determined in the said judgment. We are thus of the view that the said judgment of the Supreme Court did not come in the way of the learned Single Judge being bound by the earlier dicta of larger benches of this Court holding the guidelines to be not binding.

11. Be that as it may, the Supreme Court recently in *Banatwala & Co. v. LIC of India* AIR 2011 SC 3619 has held that the guidelines (supra) dated 30th May, 2002 are not directions under Section 21 of the LIC Act. The Supreme Court further noticed the subsequent clarificatory order dated 23rd July, 2003 of the Central Government to the effect that the guidelines dated 30th May, 2002 will not apply to affluent tenants. In the face of the said dicta of the Supreme Court, the reasoning given by the learned Single Judge of the guidelines being binding on the appellant for the reason of Section 21 of the LIC Act fails.

12. We may also notice that tenancy is but a contract and a tenant has no right to continue in occupation of the premises after the expiry of the period for which the premises were so let out. Though the Rent Control Legislations in each State have substantially interfered with the contract of tenancy and prohibited the landlords from, notwithstanding the expiry of period for which the premises were let out, evicting the tenants but as far as the city of Delhi is concerned, substantial amendments were made to the Delhi Rent Control Act, 1958 in the year 1988 (w.e.f. 1st December, 1988). The provisions of the Delhi Rent Act were made inapplicable to the premises the rent whereof was in excess of `3,500/- per month. The tenants of the premises rent whereof was/is in excess of `3,500/- per month thus lost the protection from eviction; they could continue in occupation of the premises only for the period for which the premises were let out and no further. Even if they were tenants from month to month in the premises, the landlord is entitled to evict them by determining their tenancy notice under Section 106 of the Transfer of Property Act, 1882. The same is indicative of the legislative intent. For this reason also, the guidelines cannot be said to be coming in the way of the appellant evicting the respondents. Moreover, the provisions of the Delhi Rent Act are not available to the respondents to protect their possession of the premises.

13. The judgment of the learned Single Judge can thus not be sustained and is set aside. Resultantly the writ petitions preferred by the respondents are dismissed and the order of eviction and of damages passed by the learned Estate Officer and affirmed in appeal is confirmed. No order as to costs.

14. We may also notice that a Single Judge of this Court in *Iyer & Son Pvt. Ltd. V. LIC of India* (2007) X AD (Delhi) 643 has also held that the duty of a State agency as LIC is to ensure that it uses its premises/properties and resources within its control to sub serve the best objectives and which

include an obligation to ensure that it optimizes the best returns. It was thus held that nothing wrong could be seen in the want of the LIC for better returns from its properties.

15. We may also notice that the learned Single Judge whose judgment is impugned herein has also in GKW Ltd. Vs. LIC MANU/DE/7100/2011 and in National Textile Corporation Vs. Punjab National Bank MANU/DE/2095/2010 decided shortly after the judgment impugned herein held the guidelines to be not binding on LIC / PNB and not coming in the way of LIC/PNB proceeding under the PP Act.

16. We accordingly allow these appeals and set aside the judgment of the learned Single Judge; axiomatically the writ petitions filed by the respondents are dismissed.

No order as to costs.

Sd/-
RAJIV SAHAI ENDLAW, J

Sd/-
ACTING CHIEF JUSTICE

MARCH 23, 2012

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.....OF 2009
CC 5804/2009

Suraj Lamp & Industries (P) Ltd. Thru. DIR ...
Petitioner(s)

Vs.

State of Haryana & Anr. ... Respondent
(s)

R.V. Raveendran J.

O R D E R



Delay condoned. Issue notice. Petitioner to file copies of correspondence with State Information Commissioner as also its title deeds to the disputed property. As this case is a typical example of an irregular process spreading across the country, we propose to refer to some aspects of the case at this preliminary stage itself.

2. The petitioner, a company incorporated under the Companies Act, claims that one Ramnath and his family members sold two and half acres of land in Wazirabad village, Gurgoan to them by means of an agreement of sale, General Power of Attorney (for short 'GPA') and a will in the year 1991 for a consideration of

Rs.716,695/-. It is further alleged that the petitioner verbally agreed to sell a part of the said property measuring one acre to one Dharamvir Yadav for Rs.60 lakhs in December 1996. It is stated that the said Dharamvir Yadav, and his son Mohit Yadav (an ex MLA and Minister), instead of proceeding with the transaction with the petitioner, directly got in touch with Ramanath and his family members and in 1997 got a GPA in favour of Dharamvir Yadav in regard to the entire two and half acres executed and registered and illegally cancelled the earlier GPA in favour of petitioner. The petitioner claims that when its Director, S.K. Chandak, confronted Dharamvir Yadav in the year 1999 this behalf, the said Yadav apologized and issued a cheque for Rs.10 lakhs towards part payment and agreed to pay the balance of Rs.50 lakhs shortly. But that the said cheque was dishonoured necessitating a complaint under section 138 of the Negotiable Instrument Act, being filed against Dharamvir Yadav which is pending in a criminal court at Patiala House, New Delhi. It is further alleged that in the year 2001, petitioner lodged a criminal complaint against Ramanath and members of his family who executed the sale agreement/ GPA/will in favour of the petitioner and another complaint against Dharamvir Yadav and his son in the District Court, Gurgaon, for offences punishable under sections 406, 420, 467, 468, 471 and 120B of IPC.

The petitioner claims that in December 2005 it lodged an FIR in respect of offences under Sec. 406, 467, 468, 471 and 120B of IPC against all of them.

3. The petitioner claims that as no action was taken on its FIR by the Station House Officer/Investigation Officer ('SHO/IO' for short), petitioner filed an application under Right to Information Act, 2004 ('RTI Act' for short) seeking the status, in response to which the SHO/IO gave contradictory and misleading versions about the status of the investigation and about the seizure and custody of the agreement and power of attorney from the accused. An appeal filed by the petitioner was disposed of by the Chief Information Commissioner, Haryana, by an order dated 27.12.2007 merely directing that Police should re-investigate the FIR as per the order of the court and the Department should give a specific proper reply about the status of the documents, to the appellant by 25.1.2008. According to the petitioner, the Commissioner ought to have initiated action against the police for giving false and misleading information under section 20 of the RTI Act. Petitioner therefore filed a writ petition challenging the order of the Chief Information Commissioner and seeking initiation of proceedings under section 20 of the RTI Act and imposition of penalty. The said writ petition

was disposed of by the High Court by the impugned order holding that section 20 was directory and not mandatory. This SLP seeks leave to file an appeal against the said order.

4. We are of the view that matter involves an issue whose seriousness is underestimated. The issue to be addressed is avoidance of execution and registration of deeds of conveyance as the mode of transfer of freehold immovable property by increasing tendency to adopt 'Power of Attorney Sales', that is execution of sale agreement/ general power of attorney/will (for short 'SA/GPA-Will transactions') instead of execution and registration of regular deeds of conveyance, on receiving full consideration. This method adopted has the following variants:



(i) Execution of an agreement of sale, one or two powers of attorney, with or without a will, all unregistered.

(ii) Execution of an agreement of sale, power/s of attorney and will, registering either all of them, or any two of them, or any one of them.

5. The 'Power of Attorney Sales' as a method of 'transfer' was evolved by lawyers and document writers in Delhi, to overcome certain restrictions on transfer of flats by the Delhi Development Authority (for short 'DDA').

DDA had undertaken large scale development by constructing of flats. It is stated that when DDA allotted a flat to an allottee, any transfer of the assignment by the allottee required the permission of DDA and such permission was granted only on payment to DDA of the 'unearned increase', that is the difference between the market value/sale price and the original cost of allotment. To avoid the cumbersome procedure in obtaining permission and to avoid payment of the huge part of the price to the DDA as unearned increase, a hybrid system was evolved whereby the allottee/holder of the flat, on receiving the agreed consideration would deliver the possession of the flat to the purchaser and execute the following documents :

(a) An Agreement of sale confirming the terms of the sale, delivery of possession and payment of full consideration and undertaking to execute any document when required in future.

(b) An Irrevocable General Power of Attorney in favour of the purchaser or his nominee authorizing him to manage, deal with and dispose of the property without reference to the vendor.

(c) A will bequeathing the property to the purchaser as safeguard against the consequences of death of the vendor before transfer.

6. The 'Power of Attorney Sales', as noticed above was adopted to overcome the restrictions/prohibitions in

terms of allotment and the rules of allotment of DDA governing the allotment of flats. Such transactions were obviously irregular and illegal being contrary to the rules and terms of allotment. Further, in the absence of a registered deed of conveyance, no right, title or interest in an immovable property could be transferred to the purchaser. However, the Delhi High Court in a few cases accepted such 'Power of Attorney Sales' as creating an 'interest' in the DDA flat which was so 'transferred' and consequently protected such interest of the purchaser by issuing injunctions or decrees preventing the vendor from further dealing with the property. This led to a general impression the 'Power of Attorney Sales' were valid recognized modes of transfer and the very purpose DDA prohibiting transfers and requiring permission on payment of certain difference in price was defeated by this process.

JUDGMENT

We are not presently concerned with the validity, propriety or wisdom of such judgments which virtually put the seal of approval of the court on transactions which were irregular and illegal. In fact, it is stated that DDA itself ultimately recognizes 'Power of Attorney Sales' by accepting applications from purchasers under 'Power of Attorney Sales' for conversion from leasehold to freehold and conveyance of the flats. We will

therefore presently exclude the 'power of attorney sales' of DDA flats from the purview of the present exercise.

7. What we are concerned is extension of the concept of such 'Power of Attorney Sales' by execution of SA/GPA/Will with reference to freehold properties.

8. The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration. Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs.100 and upwards to or in immovable property.

Section 49 of the said Act provides that no document required by section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affecting such property, unless it has been registered. Registration of a document gives notice to the world that such a

document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.

9. Recourse to 'SA/GPA/WILL' transactions is taken in regard to freehold properties, even when there is no bar or prohibition regarding transfer or conveyance of such property, by the following categories of persons :-

(a) Vendors with imperfect title who cannot or do not want to execute registered deeds of conveyance.

(b) Purchasers who want to invest undisclosed wealth/income in immovable properties without any public record of the transactions. The process enables them to hold any number of properties without disclosing them as assets held.

(c) Purchasers who want to avoid the payment of stamp duty and registration charges either deliberately or on wrong advice. Persons who deal in real estate resort to these methods to avoid multiple stamp duties/registration fees so as to increase their profit margin.

10. Whatever be the intention, the consequences are disturbing and far reaching, adversely affecting the economy, civil society and law and order. Firstly, it enables large scale evasion of income tax, wealth tax, stamp duty and registration fees thereby denying the benefit of such revenue to the government and the public. Secondly, such transactions enable persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby encouraging circulation of black money and corruption. This kind of transactions has disastrous collateral effects also. For example, when the

market value increases, many vendors (who effected power of attorney sales without registration) are tempted to resell the property taking advantage of the fact that there is no registered instrument or record in any public office thereby cheating the purchaser. When the purchaser under such 'power of attorney sales' comes to know about the vendors action, he invariably tries to take the help of musclemen to 'sort out' the issue and protect his rights. On the other hand, real estate mafia many a time purchase properties which are already subject to power of attorney sale, and then threaten the previous 'Power of Attorney sale' purchasers from asserting their rights. Either way, such power of attorney sales indirectly lead to growth of real estate mafia and criminalization of real estate transactions.

11. Some states have made some efforts to control such 'Power of Attorney Sales' by subjecting agreements of sale involving delivery of possession and irrevocable powers of attorney for consideration, to the same stamp duty as deeds of conveyance or by making such documents compulsorily registrable. But the steps taken are neither adequate nor properly implemented resulting in multiple transactions in regard to the same property by greedy and unscrupulous

vendors and/or purchasers giving nightmares to bonafide purchasers intending to buy a property with certainty regarding title. It also makes it difficult for lawyers in tracing and certifying title. Any process which interferes with regular transfers under deeds of conveyance properly stamped, registered and recorded in the registers of the Registration Department, is to be discouraged and deprecated.

12. The present case is a typical example of the consequences of not obtaining a registered sale deed. There is apparently no reason as to why a company registered under the Companies Act should resort to such a transaction. Execution of a will by an individual bequeathing an immovable property to a company, is also incongruous and absurd. If there was a bar and the process was adopted to overcome such bar regarding sale of lands, then courts should not go to their assistance, as that would amount to perpetuating illegalities. If there was no bar, then the questions that arise are: why should a company hold a property in a state of suspended animation from 1991? How can a company 'verbally' agree to sell a property to someone? What is the reason for the delay in lodging the complaints? If petitioner had purchased the property under a registered sale deed, numerous disputes, litigations and criminal proceedings

could have been avoided. The illegal and irregular process of 'Power of Attorney Sales' spawns several disputes relating to possession and title, and also results in criminal complaints and cross complaints and extra-legal enforcement and forced settlements by land mafia.

13. We are therefore of the view that the situation warrants special measures. We are informed that sometime back in 2008, there was a proposal to amend section 147 of Delhi Municipal Corporation Act, 1957 to check and discourage 'power of attorney sales'. There was also a proposal to have special enactment relating to registration and recording of title in Delhi. But so far nothing appears to have fructified. It is the dream of every citizen to own a house or a plot of land. The citizens must be enabled by the government to do so with safety, security and without fear of litigation or defects in title.

14. We therefore request the Solicitor General to appear in the matter and give suggestions on behalf of Union of India. We also direct notice to the States of Punjab, Haryana, Delhi, Uttar Pradesh and Maharashtra (represented by their respective Chief Secretary/Revenue Secretary) to consider the following issues:

(a) Whether 'power of attorney sales' (that is transactions involving execution of Sale

Agreement/GPA/Will) instead of regular sales is prevalent in their respective states?

(b) What are the views of the respective state government in respect of such transactions?

(c) What steps have been taken and/or proposed to be taken by the respective states to deal with the chaotic situation and confusion arising from such transactions?

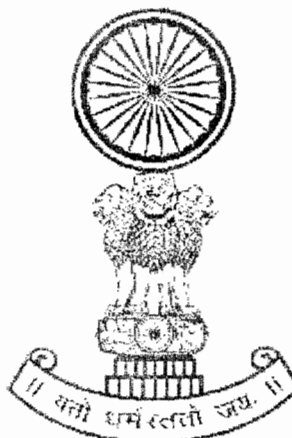
List the matter in the last week of August, 2009.

New Delhi,
May 15, 2009.

SUPREME COURT OF INDIA

J
[R. V. Raveendran]

J
[J. M. Panchal]



JUDGMENT

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.13917 OF 2009

Suraj Lamp & Industries Pvt. Ltd.

.....Petitioner

Vs.

State of Haryana & Anr.

....Respondents

R. V. Raveendran J.

JUDGMENT

By an earlier order dated 15.5.2009 [reported in *Suraj Lamp & Industries Pvt.Ltd. vs. State of Haryana & Anr.* - 2009 (7) SCC 363], we had referred to the ill - effects of what is known as *General Power of Attorney Sales* (for short 'GPA Sales') or *Sale Agreement/General Power of Attorney/Will transfers* (for short 'SA/GPA/WILL' transfers). Both the descriptions are misnomers as there cannot be a sale by execution of a power of attorney nor can there be a transfer by execution of an agreement of sale and a power of attorney and will. As noticed in the earlier order, these kinds of transactions were evolved to avoid prohibitions/conditions regarding certain transfers, to avoid payment of stamp duty and registration charges on

deeds of conveyance, to avoid payment of capital gains on transfers, to invest unaccounted money ('black money') and to avoid payment of 'unearned increases' due to Development Authorities on transfer.

2. The *modus operandi* in such SA/GPA/WILL transactions is for the vendor or person claiming to be the owner to receive the agreed consideration, deliver possession of the property to the purchaser and execute the following documents or variations thereof:

(a) An Agreement of sale by the vendor in favour of the purchaser confirming the terms of sale, delivery of possession and payment of full consideration and undertaking to execute any document as and when required in future.

Or

An agreement of sale agreeing to sell the property, with a separate affidavit confirming receipt of full price and delivery of possession and undertaking to execute sale deed whenever required.

(b) An Irrevocable General Power of Attorney by the vendor in favour of the purchaser or his nominee authorizing him to manage, deal with and dispose of the property without reference to the vendor.

Or

A General Power of Attorney by the vendor in favour of the purchaser or his nominee authorizing the attorney holder to sell or transfer the property and a Special Power of Attorney to manage the property.

(c) A will bequeathing the property to the purchaser (as a safeguard against the consequences of death of the vendor before transfer is effected).

These transactions are not to be confused or equated with genuine transactions where the owner of a property grants a power of Attorney in favour of a family member or friend to manage or sell his property, as he is not able to manage the property or execute the sale, personally. These are transactions, where a purchaser pays the full price, but instead of getting a deed of conveyance gets a SA/GPA/WILL as a mode of transfer, either at the instance of the vendor or at his own instance.

Ill-Effects of SA/GPA/WILL transactions

3. The earlier order dated 15.5.2009, noted the ill-effects of such SA/GPA/WILL transactions (that is generation of black money, growth of land mafia and criminalization of civil disputes) as under:

“Recourse to 'SA/GPA/WILL' transactions is taken in regard to freehold properties, even when there is no bar or prohibition regarding transfer or conveyance of such property, by the following categories of persons:

- (a) Vendors with imperfect title who cannot or do not want to execute registered deeds of conveyance.
- (b) Purchasers who want to invest undisclosed wealth/income in immovable properties without any public record of the transactions. The process enables them to hold any number of properties without disclosing them as assets held.
- (c) Purchasers who want to avoid the payment of stamp duty and registration charges either deliberately or on wrong advice. Persons

who deal in real estate resort to these methods to avoid multiple stamp duties/registration fees so as to increase their profit margin.

Whatever be the intention, the consequences are disturbing and far reaching, adversely affecting the economy, civil society and law and order. Firstly, it enables large scale evasion of income tax, wealth tax, stamp duty and registration fees thereby denying the benefit of such revenue to the government and the public. Secondly, such transactions enable persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby encouraging circulation of black money and corruption.

This kind of transactions has disastrous collateral effects also. For example, when the market value increases, many vendors (who effected power of attorney sales without registration) are tempted to resell the property taking advantage of the fact that there is no registered instrument or record in any public office thereby cheating the purchaser. When the purchaser under such 'power of attorney sales' comes to know about the vendors action, he invariably tries to take the help of musclemen to 'sort out' the issue and protect his rights. On the other hand, real estate mafia many a time purchase properties which are already subject to power of attorney sale and then threaten the previous 'Power of Attorney Sale' purchasers from asserting their rights. Either way, such power of attorney sales indirectly lead to growth of real estate mafia and criminalization of real estate transactions."

It also makes title verification and certification of title, which is an integral part of orderly conduct of transactions relating to immovable property, difficult, if not impossible, giving nightmares to bonafide purchasers wanting to own a property with an assurance of good and marketable title.

4. This Court had therefore requested the learned Solicitor General to give suggestions on behalf of Union of India. This Court also directed notice to States of Delhi, Haryana, Punjab, Uttar Pradesh to give their views on the matter. The four states have responded and confirmed that SA/GPA/WILL transfers required to be discouraged as they lead to loss of revenue (stamp duty) and increase in litigations due to defective title. They also referred to some measures taken in that behalf. The measures differ from State to State. In general, the measures are: (i) to amend Registration Act, 1908 by Amendment Act 48 of 2001 with effect from 24.9.2001 requiring documents containing contract to transfer for consideration (agreements of sale etc.) relating to any immoveable property for the purpose of section 53A of the Act, shall be registered; and (ii) to amend the stamp laws subjecting agreements of sale with delivery of possession and/or irrevocable powers of attorney in favour of non-family members authorizing sale, to the same stamp duty as deed of conveyance. These measures, no doubt, to some extent plugged the loss of revenue by way of stamp duty on account of parties having recourse to SA/GPA/WILL transactions, instead of executing deeds of conveyance. But the other ill-effects continued. Further such transaction which was only prevalent in Delhi and the surrounding areas have started spreading to other States also. Those with ulterior motives

either to indulge in black money transactions or land mafia continue to favour such transactions. There are also efforts to thwart the amended provisions by not referring to delivery of possession in the agreement of sale and giving a separate possession receipt or an affidavit confirming delivery of possession and thereby avoiding the registration and stamp duty. The amendments to stamp and registration laws do not address the larger issue of generation of black money and operation of land mafia. The four States and the Union of India are however unanimous that SA/GPA/WILL transactions should be curbed and expressed their willingness to take remedial steps.

5. The State of Haryana has however taken a further positive step by reducing the stamp duty on deeds of conveyance from 12.5% to 5%. A high rate of stamp duty acts as a damper for execution of deeds of conveyance for full value, and encourages SA/GPA/WILL transfers. When parties resort to SA/GPA/WILL transfers, the adverse effect is not only loss of revenue (stamp duty and registration charges) but the greater danger of generation of 'black' money. Reducing the stamp duty on conveyance to realistic levels will encourage public to disclose the maximum sale value and have the sale deeds registered. Though the reduction of the stamp duty, may result in an immediate reduction in the revenue by way of stamp duty, in the long run it

will be advantageous for two reasons: (i) parties will be encouraged to execute registered deeds of conveyance/sale deeds without any undervaluation, instead of entering into SA/GPA/WILL transactions; and (ii) more and more sale transactions will be done by way of duly registered sale deeds, disclosing the entire sale consideration thereby reducing the generation of black money to a large extent. When high stamp duty is prevalent, there is a tendency to undervalue documents, even where sale deeds are executed. When properties are undervalued, a large part of the sale price changes hand by way of cash thereby generating 'black' money. Even when the state governments take action to prevent undervaluation, it only results in the recovery of deficit stamp duty and registration charges with reference to the market value, but the actual sale consideration remains unaltered. If a property worth `5 millions is sold for `2 millions, the Undervaluation Rules may enable the state government to initiate proceedings so as to ensure that the deficit stamp duty and registration charges are recovered in respect of the difference of `3 millions. But the sale price remains `2 millions and the black money of `3 millions generated by the undervalued sale transaction, remains undisturbed.

6. In this background, we will examine the validity and legality of SA/GPA/WILL transactions. We have heard learned Mr. Gopal Subramanian, Amicus Curiae and noted the views of the Government of NCT of Delhi, Government of Haryana, Government of Punjab and Government of Uttar Pradesh who have filed their submissions in the form of affidavits.

Relevant Legal Provisions

7. Section 5 of the Transfer of Property Act, 1882 ('TP Act' for short) defines 'transfer of property' as under:

"5. Transfer of Property defined : In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself [or to himself] and one or more other living persons; and "to transfer property" is to perform such act." xxx xxx

Section 54 of the TP Act defines 'sales' thus:

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made. Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.-A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

Section 53A of the TP Act defines ‘part performance’ thus :

“**Part Performance.** – Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

8. We may next refer to the relevant provisions of the Indian Stamp Act, 1999 (Note : Stamp Laws may vary from state to state, though generally the

provisions may be similar). Section 27 of the Indian Stamp Act, 1899 casts upon the party, liable to pay stamp duty, an obligation to set forth in the instrument all facts and circumstances which affect the chargeability of duty on that instrument. Article 23 prescribes stamp duty on 'Conveyance'. In many States appropriate amendments have been made whereby agreements of sale acknowledging delivery of possession or power of Attorney authorizes the attorney to 'sell any immovable property are charged with the same duty as leviable on conveyance.

9. Section 17 of the Registration Act, 1908 which makes a deed of conveyance compulsorily registrable. We extract below the relevant portions of section 17.

"Section 17 - Documents of which registration is compulsory- (1) The following documents shall be registered, namely:--

XXXXX

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

XXXXX

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

Advantages of Registration

10. In the earlier order dated 15.5.2009, the objects and benefits of registration were explained and we extract them for ready reference :

“The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.

Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.

Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed.

Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”

Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a large extent.

Scope of an Agreement of sale

11. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam and Anr.* (1977) 3 SCC 247, observed:

A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See *Rambaran Prosad v. Ram Mohit Hazra* [1967] 1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.”

In India, the word ‘transfer’ is defined with reference to the word ‘convey’. The word ‘conveys’ in section 5 of Transfer of Property Act is used in the wider sense of conveying ownership... ..that only on execution of conveyance ownership passes from one party to another....”

In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [2004 (8) SCC 614]

this Court held:

“Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the

property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party.”

It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is

creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In *State of Rajasthan vs. Basant Nehata* – 2005 (12) SCC 77, this Court held :

“A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.”

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer *inter vivos*. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

Conclusion

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank* – 94 (2001) DLT 841, that the “concept of power of attorney sales have been recognized as a mode of transaction” when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public.

into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of '*GPA sales*' or '*SA/GPA/WILL transfers*' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an

end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to

'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions.

20. We place on record our appreciation for the assistance rendered by Mr. Gopal Subramaniam, Senior Counsel, initially as Solicitor General and later as Amicus Curiae.

21. As the issue relating to validity of SA/GPA/WILL has been dealt with by this order, what remains is the consideration of the special leave petition on its merits. List the special leave petition for final disposal.

.....J
(R. V. Raveendran)

.....J
(A. K. Patnaik)

.....J
(H. L. Gokhale)

New Delhi;
October 11, 2011.

Supreme Court of India

Supreme Court of India

L.I.C. Of India vs Anuradha on 26 March, 2004

Equivalent citations: II (2004) ACC 44, 2004 ACJ 1318, AIR 2004 SC 2070

Author: R Lahoti

Bench: R Lahoti, A Lakshmanan

JUDGMENT

R.C. Lahoti, J.

1. Leave granted in SLP (C) No.9334 of 2000.

2. A common question of law centering around Sections 107 and 108 of Indian Evidence Act, 1872 arises for decision in these two appeals.

3. In Civil Appeal No. 2655 of 1999 Sham Prakash Sharma, the late husband of Mrs. Anuradha, the respondent, had taken a life insurance policy from the appellant - Life Insurance Corporation of India (hereinafter, the LIC or Corporation, for short). The policy commenced with effect from 8.2.1986. The premium was payable every six months. For two years, the premium was paid. On 17.7.1988 Sham Prakash Sharma was at Bombay wherefrom he just disappeared, never to be traced thereafter. The respondent, Anuradha, lodged a first information report with the police. On 11th July, 1988, the LIC had sent a communication addressed to Sham Prakash Sharma and delivered at his residence informing that the insurance policy had lapsed for non-payment of premium. On 29.6.1996, the respondent approached the LIC for release of benefits under the policy proceeding on an assumption that Sham Prakash was dead as having not been heard of for a period of more than seven years. The LIC turned down the claim of the respondent relying on Rule 14 of the Insurance Manual which reads as under :

"Where a person is reported missing, it is to be advised to the claimant that Life insured will be presumed to be dead after seven years or production of the decree from the court of law and in the meantime policy is to be kept in force by making payment of premium regularly."

4. The respondent approached the State Commission constituted under the Jammu & Kashmir Consumer Protection Act, 1987 complaining of deficiency in service on the part of the appellant. The LIC defended itself mainly by submitting that as the policy was not kept alive, the claim was not maintainable. The State Commission upheld the respondent's claim forming an opinion that Rule 14 relied on by the appellant was of no relevance in view of the statutory presumption arising under Section 108 of the Evidence Act. The appellant preferred an appeal in the High Court which has been dismissed. During the course of its judgment the High Court has, by referring to Sections 107 and 108 abovesaid, and also taking into consideration a few decided cases (none of this Court), formed an opinion that there was no presumption as to the time of death and inasmuch as the LIC failed to show, that Sham Prakash was alive when the claim was preferred the benefits payable under the policy were liable to be released to the respondent.

5. In the appeal arising out of SLP (C) No.9334 of 2000, two insurance covers of Rs. 50,000/- each were taken on the life of one Dev Raj Sharma (whose heirs the respondents in that appeal are) who was employed under the Punjab government as Junior Engineer. On a day in the month of November 1988 he did not return to his home from the office. The first information report of his disappearance was lodged with the police. The premiums were regularly paid upto the time of disappearance of Dev Raj Sharma whereafter the premiums were not paid. On 20.9.1997 the respondent filed a civil suit against the LIC claiming release of benefits under the policy on the ground that the insured should be presumed to have died on the date of his disappearance, and therefore, the claim had become payable on the date of disappearance itself though the presumption as to death became available to be raised after the expiry of period of seven years from the date of disappearance, and therefore, the question of policies having lapsed for non-payment of premium after the date of

disappearance would not arise as the assured was dead.

6. Shri G.L. Sanghi, the learned senior counsel for the appellant-Corporation in both the appeals stated at the very outset and under instructions that the appellant-Corporation does not have any objection to the amounts of the insurance policies in both the cases being released to the respondents as ex-gratia payment and therefore the LIC would honour the judgment of the High Court in both the appeals but the LIC was interested in having the question of law decided. Having placed the abovesaid statement of record and also placing on record our appreciation of the good gesture shown by the Life Insurance Corporation of India, we proceed to adjudicate upon the question of law.

7. Sections 107 and 108 of the Evidence Act read as under :

"107. Burden of proving death of person known to have been alive within thirty years. - When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it."

"103. Burden of proving that person is alive who has not been heard of for seven years. - Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it."

8. There is no difference in the English Law and the Indian law on the subject. The English Law is stated in Halsbury's Laws of England (Fourth Edition, Vol. 17, paras 115 and 116) is as under :

"115. Presumptions of life and death.

There is generally no presumption of law by which the fact that a person is alive or dead on a given date can be established, but the question must be decided on the facts of the particular case.

Certain exceptions to this general rule are provided by statute, and, in addition, where there is no acceptable affirmative evidence that a person was alive at some time during a continuous period of seven years or more and it is proved that there are persons who would be likely to have heard of him over that period, that those persons have not heard of him, and that all due inquiries have been made appropriate to the circumstances, there arises a rebuttable presumption of law that he died sometime within that period."

"116. Proof of life or death at a particular time. He who asserts that a person was alive on a given date, or dead on that date, must prove the fact by evidence, since there is no presumption of continuance of life, and, generally, no presumption of death at a particular time. Where there is insufficient evidence in support of the fact alleged, the party bearing the burden of proof will fail.

Where the presumption of death after seven years' absence applies, the person will be presumed to have died by the end of that period; where the presumption does not apply, or is displaced by evidence, the issue will be decided on the facts of the particular case. In some old cases, where neither the evidence nor the incidence of the burden of proof was decisive, the court made the best order it could in the circumstances. Where the question to be decided, for purposes affecting the title to property, is which of two persons died first, a statutory rule may apply.

The question of whether a person was alive or dead at a given date will be decided on all the evidence available at the date of the hearing."

9. We may with advantage quote the statement of law as contained in Manual of The Law of Evidence by Phipson and Elliott (Eleventh Edition, at pp. 83-84). The learned authors after stating the presumption, further

state :

"It must be noted that the presumption is only as to the fact of death, not as to the time of death, so that if it has to be established that A was alive or dead on a particular day during the seven-year period, that fact will have to be proved by evidence, aided by any presumption of fact which the jury may see fit to act on. The presumption of death does not oblige the court to presume that death occurred at any time during the seven years, nor is there any presumption of law that life continued for any part of the seven-year period. Strictly, according to the leading case on the subject *Re Phene's Trusts*, (1870) L.R. 5-Ch. App.139 - the presumption only operates to establish that if at the date of an action in which the death is called in question, seven years or more have elapsed without news, A is dead at that date, i.e. the date of the action. Accordingly, it is impossible to use this presumption to prove that A was dead in say 1950, even if he has not been Heard of since 1943. This inconvenience has caused the strict rule to be departed from in some cases to allow presumption of death at any given date if seven years' absence before that is shown."

10. As to Indian decided cases of authority we are relieved of the need of entering into a research and review thereof on account of availability of two recent decisions of this Court on the point. In *N. Jayalakshmi Ammal and Ors. v. R. Gopala Pathar and Anr.*, this Court went in-depth into the jurisprudential concept underlying Section 107 and 108 of the Evidence Act and referred to commentaries of settled authority by eminent jurists such as Sri John Woodroffe and Amir Ali's Law of Evidence, M. Monir's Principles and Digest of the Law of Evidence, Sarkar on Evidence as also the leading authority of Judicial Committee of the Privy Council in *Lal Chand Marwariv. Mahant Ramrup Gir*, AIR 1926 PC 9, which has stood the test of the time for over three quarters of a century by now. The law laid down in *N. Jayalakshmi Ammal and Ors.*'s case (supra) has been reiterated in *Darshan Singh and Ors. v. Gujjar Singh (D)* by Lrs. and Ors., .

11. Peter Murphy states in 'A practical approach to Evidence' (Second Edition, pp.460-461) -- "The presumption is only that the subject died at some time during the period; his death on any particular day will not be presumed, and must be proved by evidence if in issue". The learned author having set out in brief the facts of the cases in *Re Phene's Trusts* (1870) 5 Ch App 139 and *Chipchase v. Chipchase*, [1939] P 391 and having noticed the law laid down therein proceeds to state -- "The period of seven years is, however, strictly insisted upon, and it is often pointed out that, though the rule is to some extent illogical, a period of six years and 354 days is not enough. Nor is there any presumption that the subject died from any particular cause, died childless or died celibate, though these matters may be capable of inference on the evidence, as a question of fact. It should be remembered that it is always open to the court to infer death (or that someone is alive) as a matter of fact, as it is to make any other proper inferences from the evidence. No question of the presumption arises in such a case; it is a matter of circumstantial evidence. What is sometimes called the 'presumption of continuance' -- an instance of which is that if a person is shown to be alive at a certain time, his continuing life may be inferred -- is no more than an example of such an inference, and will yield to the presumption of death where the latter applies".

12. Neither Section 108 of Evidence Act nor logic, reason or sense permit a presumption or assumption being drawn or made that the person not heard of for seven years was dead on the date of his disappearance or soon after the date and time on which he was last seen. The only inference permissible to be drawn and based on the presumption is that the man was dead at the time when the question arose subject to a period of seven years absence and being unheard of having elapsed before that time. The presumption stands un-rebutted for failure of the; contesting party to prove that such man was alive either on the date on which the dispute arose or at any time before that so as to break the period of seven years counted backwards from the date on which the question arose for determination. At what point of time the person was dead is not a matter of presumption but of evidence, factual or circumstantial, and the onus of proving that the death had taken place at any given point of time or date since the disappearance or within the period of seven years lies on the person who stakes the claim, the establishment of which will depend on proof of the date or time of death.

13. A presumption assists a party in discharging the burden of proof by taking advantage of presumption arising in his favour dispensing with the need of adducing evidence which may or may not be available. Phipson and Elliott have observed in 'Manual of the law of Evidence' (Eleventh Edition, at p.77) that although there is almost invariably a logical connection between basic fact and presumed fact, in the case of most presumptions it is by no means intellectually compelling. In our opinion, a presumption of fact or law which has gained recognition in statute or by successive judicial pronouncements spread over the years cannot, be stretched beyond the limits permitted by the statute or beyond the contemplation spelled out from the logic, reason and sense prevailing with the Judges, having written opinions valued as precedents, so as to draw such other inferences as are not contemplated.

14. On the basis of the abovesaid authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act 1872. In the scheme of Evidence Act, though Sections 107 and 108 are drafted as two Sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question, arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person who's life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise.

15. If an issue may arise as to the date or time of death the same shall have to be determined on evidence -- direct or circumstantial and not by assumption or presumption. The burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim. Rarely it may be permissible to proceed on premise that the death had occurred on any given date before which the period of seven years' absence was shown to have elapsed.

16. We cannot, therefore, countenance the view taken by the High Court in either of the two appeals that on the expiry of seven years by the time the issue came to be raised in Consumer Forum or Civil Court and evidence was adduced that the person was not heard of for a period of seven years by the wife and/or family members of the person then not only the death could be presumed but it could also be assumed that the presumed death had synchronized with the date when he was reported to be missing or that the date and time of death could be correlated to the point of time coinciding with the commencement of calculation of seven years backwards from the date of initiation of legal proceedings. In order to successfully maintain the claim for benefit under the insurance policies it is necessary for the policy to have been kept alive by punctual payment of premiums until the claim was made. The appellant-LIC was justified in turning down the claims by pleading that the policies had lapsed and all that could be paid to the claimants was the paid-up value of the policies.

17. The appeals are allowed and both the judgments of the High Court under appeal are set aside but subject to the clarification that, in view of the statement made on behalf of the appellant-LIC, the monetary benefits

available to the respondents in the two appeals under the judgments of the High Court shall not be denied by the appellant-LIC.

18. Before parting we would like to make an observation. Unfortunately some of the regions or States in India are insurgency afflicted. The life has become uncertain there. People live constantly under fear of death. Uncertainty of life has been accepted as a normal course of living. The Life Insurance Corporation, as a social welfare institution, more so when life insurance has been nationalized and the service is not available in private sector, should think of devising a policy available in insurgency afflicted regions which would take care of the assured and his family members in such areas. When the assured suddenly disappears or ceases to be traceable, may be the beneficiaries or nominees do not even know that the deceased had an insurance policy. They may not be aware if the insurance premiums have been paid or have remained not paid and what were the due dates and other obligations to be performed by the assured to keep the policy alive. Insurance policies with terms and conditions suited to the requirements of people inhabiting insurgency or militancy affected areas need to be devised and propagated.

Consumer Disputes Redressal Commission

Consumer Disputes Redressal Commission

Satya Deo Malviya vs Life Insurance Corporation Of ... on 19 January, 2004

Equivalent citations: I (2004) CPJ 96 NC

Bench: M Shah, R Rao

ORDER

M.B. Shah, J. (President)

1. It is the say of the complainant that his mother, Smt. Minta Devi, had taken a life policy from the LIC of India for a sum of Rs. 25,00,000/- and a sum of Rs. 1,04,975/- was paid as a single premium. The endowment policy was for a period between 28th September, 1989 and 28th September, 2002, i.e. to say maturity date was after 13 years from the date of the policy. It is also averred that complainant, Satya Deo Malviya was made nominee under the said policy and the policy was duly assigned to him by his mother. That assignment was registered by the LIC on 25.9.1992 by the endorsement on the policy bond issued by Corporation.

2. It is further stated that mother of the complainant died on 10.5.1994. Hence, complainant preferred the claim. To this, complainant was asked to produce succession certificate/Complainant wrote back that as the policy was assigned there was no question of producing succession certificate. As the amount was not paid, notice dated 1.9.1994 was served on the opposite party. That notice was replied by an Advocate, Mr. Jaiswal by letter dated 7.10.1994. It is submitted that there was no justifiable reason for the opposite party not to pay the amount insured as per the policy. Hence, LIC be directed to pay the said amount with interest and costs.

3. In response to the notice issued by the Commission, it is contended by the LIC that endowment policy issued in favour of Mrs. Minta Devi was for a sum of Rs. 2,50,000/- (Rupees two lakhs fifty thousand only) and not Rs. 25,00,000/- as incorrectly mentioned in the policy bond. It is submitted that single premium of Rs. 1,04,975/- as per Table 21 which was in force at the relevant time for the endowment policy was paid by the deceased. The age of the deceased at the time of taking the policy was 77 years and the policy was for a term of 13 years. On payment of single premium for this purpose reliance is placed upon Table 21 which provides that endowment term premium rates for the sum assured. As per the said table, if the policy is for 13 years, then single premium for the policy for Rs. 1,000/- was Rs. 419.90. It is pointed out that such policies of insurance are issued by the Corporation to persons of all age-groups without medical checkup and such pure endowment policy entails the payment of the sum assured only if the life insured survives the term of the plan. In case of death prior to the stipulated period, the assignee is entitled to refund of the premium paid with interest thereon @ 21/2% p.a. compounding yearly, calculated from the date of the premium paid. Relevant part of the Table 21 relating to pure endowment policy for adults or children is as under :

"Under the policy, the sum assured is payable on the life assured's surviving the endowment term. If the said life assured shall die before date of maturity while the policy is in force, the following amounts shall be payable to the person or persons entitled to them under an annual premium policy.

(i) if death shall occur during the first three policy years, the total amount of all premiums paid, and (ii) if death shall occur after the third policy year, the total amount of all premiums paid with interest thereon at the rate of 21/2% per annum compounding yearly calculated from the due dates of premiums paid upto the date of death.

Provided, however, that in no case shall the amount payable exceed the sum assured payable under the policy.

It is, therefore, submitted that complainant is not entitled to get Rs. 25,00,000/- against the payment of a single premium of Rs. 1,04,975/-. For taking the endowment policy for a sum of Rs. 25,00,000/-, Rs. 16,51,100/- were required to be paid as premium.

4. Learned Counsel for the complainant submitted that insurance policy specifically mentions that it was for a sum of Rs. 25,00,000/-. He, therefore, submitted that complainant is entitled to receive the said sum with interest and, therefore, there is no question of any mistake in issuance of the policy. He also refers to the reply dated 7.10.1994 given on behalf of the Insurance Company to the notice issued on behalf of the complainant and submitted that in the said reply also it is nowhere mentioned that endowment policy was only for a sum of Rs. 2,50,000/- and not for Rs. 25,00,000/-.

5. It is true that in the original insurance policy which was produced before us for our perusal the amount which is mentioned is Rs. 25,00,000/-. However, considering the facts stated in the affidavit by the Insurance Company it is apparent that instead of Rs. 2,50,000/- it is evident that by apparent mistake Rs. 25,00,000/- is mentioned. One-time premium for the endowment policy for the period of 13 years would be Rs. 16,51,100/- which is admittedly not paid. Therefore, the question is whether mentioning of incorrect figure would be sufficient for grant of the amount as claimed by the complainant. In our view, typographical error of adding one Zero after Rs. 2,50,000/- would not entail the complainant to receive the said amount. Parties to the agreement are not entitled to get benefits of apparent mistakes. In a contract of insurance there is a requirement of uberrima fides, i.e. good faith on the part of the assured. Re. Life Insurance Corporation v. Smt. G.M. Channabasamma, (1991) 1 SCC 357. It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. Moreover, in the policy itself, in bold letters, it is mentioned that, "You are requested to examine this policy and if any mistake be found therein, return it immediately for correction."

6. In any case, as per the term quoted above, the complainant is entitled to have only refund of the premium with interest @ 2.5% p.a. as the death of the insured has occurred before the date of maturity. As stated above, the policy was taken on 28.9.1989 and the insured expired on 10.5.1994. Admittedly, it was an endowment policy for a period of 13 years. Therefore, the complainant is not entitled to receive the amount of Rs. 25,00,000/- as claimed by him. He is entitled to receive the premium paid with interest @ 2.5% p.a. compounding yearly calculated from the due dates of premium paid upto the date of death. Admittedly, the premium paid by the deceased was Rs. 1,04,975/-.

7. In the result, complaint is partly allowed. LIC is directed to refund the premium of Rs. 1,04,975/- with 2.5% interest thereon till the date of the complaint, i.e. upto 30th September, 1995, and, thereafter, with 9% simple interest till its payment, as the LIC ought to have paid or offered to pay the said amount prior to the date of complaint.

The complaint is disposed of accordingly considering the exaggerated claim. There shall be no order as to costs.

Consumer Disputes Redressal Commission
Consumer Disputes Redressal Commission
Life Insurance Corporation Of ... vs Priyanka Singh on 14 October, 2005
Equivalent citations: III (2007) CPJ 436 NC
Bench: B Taimni, P Member
ORDER

B.K. Taimni, Presiding Member

1. Appellant was the opposite party before the State Commission, where the respondent/ complainant had filed a complaint alleging deficiency in service on the part of the appellant.

2. Very briefly the facts leading to filing the complaint are that the complainant's husband late Sidharth Singh had obtained an L.I.C. Policy for Rs. 6,00,000 with 'Double Accident Benefit'. The insured died in the morning at 8.00 a.m. on 8.5.2001, on account of sudden firing of rifle on himself while checking the rifle of his mother. An F.I.R. was lodged. Post-mortem was carried out; Viscera was also chemically examined. When the claim was preferred with the appellant, they settled the claim of the main policy but it is the case of the respondent/complainant that appellant Insurance Company did not give her, i.e., the widow of the deceased, benefit accruing from "Double Accident Benefit" under the policy. When this amount was not given, alleging deficiency in service, a complaint was filed before the State Commission, who after hearing the parties and perusal of the material on record, directed the appellant to pay Rs. 5,00,000 admissible under the Double Accident Benefit along with interest (c) 12% from 1.1.2002 till payment along with compensation of Rs. 1,00,000 for mental agony and Rs. 5,000 as cost of litigation. Aggrieved by this order, this appeal has been filed before this Commission.

3. We heard the learned Counsel for both the parties. Basic facts are not disputed, hence are not being reproduced. The basic contention of the learned Counsel for the appellant is that as per terms of Policy Conditions 10(2)(b) and 10(2)(b)(i), the claim is not payable. These conditions read as follows:

(b) Death of the Life Assured-to pay an additional sum equal to the sum assured under this policy, if the life assured shall sustain any bodily injury resulting solely and directly from the accident caused by outward, violent and visible means and such injury shall within 120 days of the occurrence solely, directly and independently of all other causes result in the death of the life assured. However, such additional sum payable in respect of this policy, together with any such additional sums payable under other policies on the life of the assured shall not exceed Rs. 5,00,000. The Corporation shall not be liable to pay the additional sum referred in (a) or (b) above, if the disability or the death of the life assured shall:

(i) be caused by intentional self injury, attempt suicide, insanity or immorality or whilst the life assured is under the influence of intoxicating liquor, drug or narcotic; or

4. It is the case of the appellant that this was a case of suicide which had occurred under the influence of intoxicating liquor, hence any death caused on account of influence of liquor is not payable within the terms of the policy. For this he also drew our attention to the report of the "State Forensic Science Laboratory, Rajasthan," in which it is clearly held that "quantity of ethyl alcohol in blood sample was estimated 109.25 mg / 100 ml". As per medical literature, "HWVCOX 'Medical Jurisprudence and Toxicology', Seventh Edition PC Dikshit" brought on record, there are three stages of alcoholic intoxication, which reads as follows:

Stage of Excitement (50 to 150 mg percent)

Feeling of well-being, slight excitement, increased confidence, lack of self-control are usually seen. There is a heightened sexual desire, but performance is reduced. The visual acuity is reduced. It also alters time and space orientation. There is poor judgment and mental concentration is retarded.

Stage of Incoordination (150 to 250 mg percent)

The sense of perception and the skilled movements are affected. Inhibition of higher occur, resulting in a change in the conduct of the individual. He becomes irritable, grey, quarrelsome and sleepy. There is incoordination and clumsiness of fine and skilled movements. There is altered speech and fine tremors in the fingers. Nausea and vomiting are common. Pulse is increased and flushing of the face occurs. The sense of touch, smell and hearing is diminished. The pupils are dilated but their reaction to light is hopeful sign.

Stage of Comma

The motor and sensory cells are deeply affected. There is slurring of speech and coordination is greatly affected. The person may stagger and may even fall. There is strenuous breathing and rapid pulse and temperature becomes sub normal. The pupils are contracted but on painful stimulate they dilate and then there is a slow return to the contracted stage which is known as Me Ewan Sign. The patient may die or may recover in 8 to 10 hours with acute depression, nausea and headache. If coma is for more than five hours, death may occur due to asphyxia as a result of respiratory paralysis.

5. Learned Counsel for the appellant relies on the first stage which was the stage in the instant case with regard to the deceased. In persons found with alcohol 50 to 150 mg percent, in their blood "...the visual acuity is reduced, time and space orientation is also altered, there is poor judgment and mental concentration is retarded". In view of this fallout of alcohol consumption, the deceased should be deemed to be under alcohol, which ousts him from being eligible for "Double Accident Benefit" under the policy as per terms of the policy. On the other hand, the learned Counsel for the respondent/complainant drew our attention to the medical literature relating to the textbook of 'Biochemistry' in which the wording used is:

Pre-intoxication 50 - 150 mg/dl' Signs of instability, decreased neuromuscular coordination, judgment and control required for quick responses such as car driving are impaired.

Intoxicating stage 150 - 300 mg / dl' speech impaired, motor skills are incoordinated.

6. It is his case that in view of this textbook of Biochemistry, the deceased cannot be said to be an intoxicated as alcohol found in his blood was only 109 mg percent; at best as per the report of the laboratory, the deceased could be said to be in pre-intoxication stage.

7. We have very carefully gone through the material on record. We are concerned with the interpretation of the word 'intoxication in the context of the policy. If one reads policy condition 10(2)(b) along with Sub-section (1), the deduction is quite clear that the 'spirit' of the terms and conditions of the policy is, that the man has to be in his senses and, in our view, a normal meaning of word 'intoxicating liquor' 10(2)(b)(i) has to be given to the material brought on record. Oxford Dictionary states Intoxication means 'make drunk; excite or elate beyond self control.' In the Text book of Biochemistry produced by the respondent/complainant, the normal reading should be 5 mg /dl. Next stage, the social stage where the reading should be 50 mg/dl. In the literature it is made clear that 50 -150 mg decreases "neuromuscular coordination and also brings in sense of instability". We should not forget that this was allegedly the case of firing on self as a result of checking the rifle of the deceased's own mother. If we see these three stages in the "Medical Jurisprudence and Toxicology", reproduced earlier, during 'the stage of Excitement' (50 to 150 mg percent) one has "feeling of well being slight excitement..., the visual acuity is reduced...there is poor judgment and mental concentration is retarded...". All these factors have a direct relationship on what happened in this case, when as a result of checking the weapon, which obviously was loaded and not checked for this purpose by the person checking the rifle-the deceased in this case -shot himself. We cannot be oblivious that rifle was being checked by a person having quantity of ethyl alcohol of 109.92 mg/100 ml in his blood, whose faculties stood impaired in above forms. A person having alcohol level of 109.92 mg/100 ml in the blood cannot be said to be in normal condition, in any case, to handle a gun in such a stage. It cannot be said that he was not under intoxication as a

result of alcohol, especially if we see that a person having this high reading of contents of ethyl alcohol in blood shall result in decreased neuromuscular coordination, a poor judgment and reorientation of mental concentration. Reading the spirit of the policy and also material brought on record, in our view, it was not a simply case of self firing by a gun while checking, especially when we see as a result of material on record, that a person having 109 mg/ 100ml in his blood would result in decreased concentration, judgment and responses mechanism, decreased coordination, which resulted in self firing of the gun without really finding out/checking of the weapon that it is a loaded weapon. In our view, even as per meaning given to the 'intoxication' in Oxford Dictionary, the deceased shall fall in the category of 'intoxicated'. In the light of above, our deduction is quite clear that this was only on account of above impairments resulting from alcohol in his blood, which led to self firing upon himself without ascertaining if the gun was loaded or otherwise?

8. Problem is not 'definitional'? Question is how to construct a particular word and read its meaning in this case 'Intoxication' - within the terms and conditions of the policy, keeping in view the facts and circumstances of this case? Will a person whose visual acuity is reduced,...there is poor judgment and mental concentration is retarded...and handling a loaded gun, pointing at himself and shooting himself dead, be said to have done so while under intoxication? In our view, with all these stated impairments and seen in the sequence of events leading to shooting himself dead, cannot but lead us to conclude that this episode occurred on account of the fact that he was under 'intoxication as a result of consumption of alcohol-found in his blood sample and thus making him ineligible from the benefits of double accident policy read within the terms of policy as incorporated in Condition 10(2)(b)(i).

9. In view of above discussion, we find that the State Commission erred in concluding that the deceased shall fall outside the provisions of the terms of the policy as reproduced earlier. In our view, it was under the influence of intoxicating liquor with concomitant fall out that the unfortunate accident happened. Thus, the respondent complainant shall not be entitled to 'double accident benefit' Under the terms of the policy, in view of which we are unable to sustain the order passed by the State Commission, which is set aside. The appeal is allowed and complaint is dismissed.

No order as to costs.

Bombay High Court

Bombay High Court

L.I.C. Of India vs Ramesh Chandra on 11 April, 1997

Equivalent citations: 1998 (3) BomCR 439

Bench: H / Eradi, S Chandha, . M Thamarajakshi, S Bagla, C Chaudhry

ORDER

S.S. Chadha, Member

1. This Revision petition has arisen out of the order dated 22-7-96 passed by the Madhya Pradesh State Commission at Bhopal dismissing the appeal and upholding the order dated 29-11-95 of the District Forum-Dewas allowing the complaint and directing the Life Insurance Corporation of India- Opposite party, (for short called L.I.C.) to pay Rs. 50,000/- in (sic to) the complainant within two months from 29-11-95 and also pay Rs. 150/- as costs of the case.

2. The facts are not in dispute and may be briefly noticed. The complainant had taken a life insurance Policy No. 34180460 commencing from 27th March, 1993, for Rs. 50,000/- under 15 years money back policy with profit (with accident benefit). Under the terms of the policy, the sum assured together with accrued bonus was payable on death before the stipulated date of maturity and in case of survival, 25% of the sum assured was payable after 5 years, another 25% after 10 years and the remaining 50% of the sum assured with accrued bonus on the stipulated date of maturity. Besides, the life assured was entitled to accidental benefits/disability benefits on account of accident vide Clause 10 of the policy. The complainant met with an accident on 25th April, 1994, resulting into injuries in his right hand, left leg below knee, nose and back of his head. Ultimately the complainant's right hand was amputated. The complainant claimed that he was entitled to receive the sum assured i.e. Rs. 50,000/- from the Opposite Party due to amputation of his right hand. The opposite party opined that on the basis of the averments made in the claim that no case was made out for accident/ disability benefit under the terms of policy bond and did not entertain the claim. Alleging deficiency in service, the complainant filed the complaint before the District Forum, Dewas.

3. The District Forum in the order dated 29th of November, 1995 held that it was fully proved that the complainant had assured himself with the Corporation for a sum assured of Rs. 50,000/- for accidental insurance, that the complainant met with rail accident on 25-4-94 and as a result of injuries received in the aforesaid accident the complainant's right hand was amputated, that the complainant's wife intimated to the opposite party about the aforesaid rail accident and the fact of amputation and that claim was made and reminders sent by the complainant from time to time to the opposite party for obtaining insurance claim amount but not settled. The District Forum after examining the affidavits and the fact that the complainant's hand was amputated as a result of the said accident, admitted the complaint and ordered the opposite party to pay Rs. 50,000/- to the complainant within 2 months from 29-11-95 and also Rs. 150 as costs. The State Commission in appeal by the L.I.C. upheld the finding of the District Forum that the disability of the complainant was total and permanent on account of the accident resulting in cutting of his hand and the claim is covered by Clause 10(a) of the insurance policy. The State Commission dismissed the appeal and upheld the order of the District Forum.

4. We have heard Shri S.K. Taneja, Advocate for the petitioner herein and with his help have gone through the records as the respondent did not appear either in person or through any Authorised Representative. A contract of life assurance is a contract to pay a sum of money on the death of the assured or on the happening of the events included in the insurance cover in consideration of due payment of certain annuity during the life time of the assured. The life insurance business is defined in section 2(11) of the Insurance Act, 1938 reading as follows :

"life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the

happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include :

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such persons;"

5. A contract of life assurance is a contract to pay a sum of money on the death of assured in consideration of premium. Life Insurance business covers not only the contracts of insurance upon the human life but also on the happening of any contingency dependent on human life by the deeming inclusion clause for the grant of disability and double or triple benefit and accident benefit, if so provided in the contract of insurance. The provisions in the contract of insurance is the determining factor of the contract of indemnity and the incidence of payment of the amount under the policy bond. Insurance often does not necessarily give perfect indemnity. A contract of insurance is like any other contract whereby one person, called the insurer undertakes, in return for the agreed consideration, called the premium, to pay to another person, called the assured, sum of money or its equivalent, on the happening of a specified event. An essential element of the contract of insurance is that the agreement provides that the insurer undertakes to indemnify the insured on the happening of a specified event. Life Insurance business now includes miscellaneous insurance. A claim will arise in life insurance only in the event of death or on attaining a specified age, but if the policy is coupled with miscellaneous insurance, the life assured will be entitled to accidental benefit/disability benefit as in this case. In addition to the sum assured under the policy together with accrued bonus payable on death, the life assured was entitled to accidental benefit/disability benefit on account of accident vide Clause 10 of the policy bond reading as follows :

"Accident Benefits : If at any time when this policy is in force for the full sum assured, the Life Assured, before the expiry of the period for which the premium is payable or before the policy anniversary on which the age nearer birthday of Life Assured is 70 whichever is earlier, is involved in an accident resulting in either permanent disability as herein after defined or death and the same is proved to the satisfaction of the Corporation, the Corporation agrees in the case of

(a) Disability to the Assured : (i) to pay in monthly instalments spread over 10 years and additional sum equal to the sum assured under this Policy. If the policy becomes a claim before the expiry of the said period of 10 years, the disability benefit instalment which have not fallen due will be paid along with the claim, (ii) to waive the payments of future premiums.

The maximum aggregate limit of assurance under all policies on the same life to which benefits (i) and (ii) above apply shall not in any event exceed Rs. 5,00,000/-. If there be more policies than one and of the total assurance exceeds Rs. 5,00,000/- the benefits shall apply to the first Rs. 5,00,000/- sum assured in order of date of the policies issued.

The waiver of premiums shall extinguish all options under this policy and also the benefits covered by para (b) of the clause except as to such assurance, if any, as exceeds the maximum aggregate limit of Rs. 5,00,000/- and which have been kept in force by continued payment premiums.

The Disability above referred to must be disability which is the result of an accident and must be total and permanent and such that there is neither then nor at any time thereafter any work occupation or profession that the Life Assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit.

Accidental injuries which independently of all other causes and within 120 days from the happening of such accident result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists or in the amputation of feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above the ankle shall also be deemed to constitute such disability."

6. The question is whether the amputation of right hand suffered by the complainant is a specified event and constitute disability entitled to an accident benefit under Clause 10(a) of the policy bond. The accident benefit is available to the assured only if he is involved in an accident resulting in total and permanent disability as defined in Clause 10. The disability referred in the said clause must be disability which is the result of accident and must be total and permanent. The accidental injuries which independently of all other causes and within 120 days from happening of such accident result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists or in the amputation of feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above the wrist ankles only constitute such disability. The case of the complainant is not of the amputation of both hands at or above the wrists or in the amputation of feet at or above ankles. The case of the complainant is the amputation of one hand at or above the wrist but that is not independently deemed to be a disability as is covered since the coverage in the clause is only in cases of amputation of one hand at or above the wrist and one foot at or above ankle. It bears repetition that the deeming clause constituting the disability will get attracted only if there was the amputation of one hand at or above the wrist and one foot at or above the ankle. If it is the amputation of one hand at or above wrist or the amputation of one foot at or above the ankle, then it does not by the fiction of the Clause 10(a) constitute disability. The construction of the policy bond which is the basis of the contract of insurance, is a question of law and its true and correct interpretation would give jurisdiction to the Fora to pronounce upon the deficiency in service, if any. The District Forum as well as the State Commission had no jurisdiction to go beyond the terms and conditions of the policy bond and could only order the payment of the disability benefit if it was specified event covered under Clause 10 of the conditions of policy. The amputation of only one hand does not fall within the deeming definition constituting disability in terms of Clause 10(a) of the policy bond and thus the impugned orders suffer from serious illegalities.

7. The impugned orders of the District Forum and the State Commission are hereby set aside and the complaint is dismissed leaving the parties to bear their own costs throughout.

MANU/SC/2657/2006

Equivalent Citation: 2006ACJ1804, AIR2006SC2366, 2006(6)ALT24(SC), 2006 3 AWC(Supp)2759SC, [2006]131CompCas373(SC), II(2006)CPJ18(SC), 2006(3)CTC583, JT2006(5)SC484, 2006(2)KLT785(SC), 2007-1-LW661, 2006(3)MPJR(SC)83, RLW2006(3)SC2549, 2006(5)SCALE375, (2006)5SCC258, [2006]Supp(1)SCR854, 2006(1)UJ730 

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 4492 of 2000

Decided On: 04.05.2006

Appellants: Life Insurance Corporation of India and Anr.

Vs.

Respondent: Smt. S. Sindhu

Hon'ble

B. N. Srikrishna and R. V. Raveendran, JJ.

Judges/Coram:

Counsels:

For Appellant/Petitioner/Plaintiff: T.R. Andhyarujina, Sr. Adv., A. Ranganadhan, Buddy A. Ranganadhan, A.V. Rangam and A. Raghunath, Advs

For Respondents/Defendant: A. Raghunath, Adv. (N.P.)

Subject: Insurance

Catch Words

Mentioned IN

Acts/Rules/Orders:

Interest Act, 1839 - Section 1; Interest Act, 1978 - Section 2, Interest Act, 1978 - Section 3, Interest Act, 1978 - Section 3(1), Interest Act, 1978 - Section 3(3), Interest Act, 1978 - Section 4(1), Interest Act, 1978 - Section 4(2)

Cases Referred:

Harshad J. Shah v. L.I.C. of India MANU/SC/0635/1997; Satinder Singh v. Umrao Singh etc. MANU/SC/0292/1961; Hirachand Kothari (D) by LR. v. State of Rajasthan and Anr. MANU/SC/0278/1985; Bengal Nagpur Railway Co. Ltd. v. Rultanji Ramji MANU/PR/0017/1937

Prior History:

From the Judgment/Order dated 2.11.1999 of the National Consumer Disputes Redressal

Commission, New Delhi in Revision Petition No. 1534 of 1999

Disposition:

Appeal allowed

Citing Reference:

Discussed

4

Case

Note:

(1) Consumer Protection Act, 1986 - Section 2 (1) (g), 12, 17 and 21--Interest Act, 1978--Sections 3 and 4--Deficiency in service--Payment of amount of insurance--Liability to pay interest thereon--Husband of complainant took policy for Rs. 5 lakhs under money back policy scheme for 20 years--Policy commenced from 4.12.1993--Assured died on 5.12.1997 when policy lapsed from 4.3.1997 for non-payment of premium--Insurer settled claim of complainant under condition 4 of policy whereunder paid up value of policy was arrived at Rs. 1,13,750--Said amount was paid by appellant L.I.C. to complainant on 26.3.1998 within three months--Whether complainant entitled to interest on every amount premium from date of its payment?--Held, no--Contract of insurance providing that if premium not paid after 3 years, policy to subsist only as paid-up policy for reduced sum--It does not provide for payment of interest on premium paid--Under contract no interest is payable by L.I.C.--However, appellant not entitled to refund of any amount paid to respondent pursuant to direction of consumer fora.

It is now well-settled that interest prior to the date of suit/claim (as contrasted to pendent-lite interest and future interest) can be awarded in the following circumstances :

- (a) Where the contract provides for payment of interest ;
- (b) Where a statute applicable to the transaction/liability, provides for payment of interest ;
- (c) Where interest is payable as per the provisions of the Interest Act, 1978.

(2) Constitution of India--Article 142--Precedent--Ratio of decision of Supreme Court--Award of interest in Harshad J. Shah v. L.I.C. of India, (1997) 5 SCC 64, being followed by Consumer forum and Commissions--Is classic case of direction issued by Supreme Court in exercise of power under Article 142 on special facts--Being wrongly interpreted as general principle of law laid down by Apex Court.

JUDGMENT

R.V. Raveendran, J.

1. The short question that arises for consideration in this appeal is whether in the case of a lapsed life insurance policy, the Life Insurance Corporation of India ('the LIC' for short) while paying

the reduced sum payable by treating it as a paid- up policy, is liable to pay interest in regard to premiums paid from the respective dates of payment of premiums to date of settlement.

2. A policy of insurance dated 11.3.1994 for an assured sum of Rs. 5 lakhs with risk commencing from 4.12.1993 was issued in regard to the life of K. Thankachan under the 'money back policy' scheme for a period of 20 years. The premium payable was Rs. 8,306/- every quarter. The conditions of the policy made it clear that the policy will be in force only if the premiums were paid regularly, every quarter, and that if the premium was not paid before the expiry of the grace period provided, the policy will lapse. K. Thankachan paid the premiums till 4.6.1994 and did not pay the premiums thereafter. In August, 1996, he opted for revival of the policy by paying the arrears of premium from 4.9.1994 to 4.6.1996 with interest. Accordingly, the policy was revived and he paid the premium till 4.12.1996. Thereafter, the policy again lapsed from 4.3.1997 as premium was not paid. K. Thankachan died on 5.12.1997 and his widow/nominee (the respondent herein) made a claim for payment of the amount under the policy, by letter dated 1.1.1998.

3. Condition No. 4 of the policy contains the exceptions to lapsing of the policy. The portion of the said condition relevant for our purpose, is extracted below :-

4. Non-forfeiture Regulations: **If, after atleast three full years premiums have been paid in respect of this Policy, any subsequent premium be not duly paid this policy shall not be wholly void, but shall subsist as a paid-up policy for a reduced sum payable on the Date of Maturity or at the Life Assured's prior death provided the paid up sum assured is not less than Rs. 250. The amount of paid up assurance for integral number of years' premiums paid will be calculated as per Table given below. The policy so reduced shall thereafter be free from all liability for payment of within mentioned premium but shall not be entitled to participate in future profits. The existing bonus additions if any, will remain attached to the reduced paid up policy.**

(Emphasis supplied)

4. The 'paid up value' of the policy was arrived at Rs. 1,13,750/- as per Condition (4) of the policy and was paid by the LIC to the respondent on 26.3.1998, on her executing a full and final settlement discharge. As the policy of insurance with profit plan was eligible for bonus only if premiums are paid at least for a period of 5 years and as the insured had paid premium only for a period of three and quarter years, the policy was found to be ineligible for bonus.

5. The respondent approached the Consumer Disputes Redressal Forum, Kollam, on 30.4.1998, praying for a direction to the LIC to pay her the entire sum assured under the policy namely, Rs. 5 lacs with accrued bonus and interest at 12% per annum, as also Rs. 25,000/- as compensation for deficiency of service and Rs. 5,000/- as costs.

6. The Appellant (LIC) resisted the said claim pointing out that it had released the paid-up value of Rs. 1,13,750/- in terms of the policy, in full and final settlement and it had no liability either to

pay the assured sum or bonus or any interest. The District Forum by order dated 28.8.1998 rejected the contention of the respondent that she is entitled to the assured sum of Rs. 5 lacs or bonus. It held that the respondent was only eligible for payment of Rs. 1,13,750/- as paid-up value in terms of Condition No. 4 of the policy. The District Forum, however, directed the LIC to pay interest at 15% per annum (on the sum of Rs. 1,13,750/-) from the respective dates of receipt of the amounts of premium to date of settlement. For grant of such interest, the District Forum relied on the decision of this Court in **Harshad J. Shah v. L.I.C. of India** [1997]3SCR617 : MANU/SC/0635/1997 :

7. An appeal was filed by the LIC before the Kerala State Consumer Disputes Redressal Commission contending that it was not liable to pay interest from the date of receipt of the premiums, and the decision in *Harshad J. Shah* (supra) did not require payment of such interest. The Commission allowed the appeal in part, on 31.3.1999. It held that the direction to pay interest from the dates of payment of premium was in accordance with the decision in **Harshad J. Shah** (supra) and did not call for interference. The rate of interest was, however, reduced from 15% to 12% per annum. The revision filed by LIC against the order of the State Commission was rejected by the National Commission on 2.11.1999, on the ground that order of the State Commission did not suffer from any illegality or jurisdictional error. The said order is challenged in this appeal.

8. At the outset, what should be noticed, is that the amount that is paid by LIC in regard to a lapsed policy, is not "refund of the premiums paid on various dates", but a reduced lump sum (calculated as per condition no. 4 of the policy) instead of the assured sum. When what is paid by LIC is not refund of premiums, the question of treating the amount paid by LIC as refund of premiums paid and then directing payment of interest thereon from the respective dates of payment of premium does not arise. That would amount to treating the premiums paid in respect of a policy which lapsed by default, as fixed deposits repayable with a hefty rate of interest. Surely, the intention is not to reward defaulting policy holders. Moreover, the courts and Tribunals cannot rewrite contracts and direct payment contrary to the terms of the contract, that too to the defaulting party. Be that as it may.

9. We will now examine whether award of interest can be sustained in any manner. It is now well-settled that interest prior to the date of suit/claim (as contrasted to *pendente-lite* interest and future interest) can be awarded in the following circumstances:

- (a) Where the contract provides for payment of interest; or
- (b) Where a statute applicable to the transaction/ liability, provides for payment of interest; or
- (c) Where interest is payable as per the provisions of the Interest Act, 1978.

10. In this case, the contract, that is the insurance policy, provides that if the premium is not paid (after regularly paying premiums for a period of three full years), the policy shall subsist only as

a paid up policy for a reduced sum (calculated as per Table given in Condition No. (4) of the policy) payable on the date of maturity or at the prior death of the life assured. It does not provide for payment of interest on the premiums paid. In fact, the operative portion of the policy specifically provides that no interest will be paid. The relevant portion extracted below:

The Life Insurance Corporation of India...do by this policy agree, in consideration of and subject to the due receipt of the subsequent premiums as set out in the Schedule, to pay the sum assured (together with such further sum or sums as may be allocated by way of Bonus in the case of 'with profits' policies) **but without interest**,...to the person or persons to whom the same is payable in terms of the said Schedule.... This policy of assurance shall be subject to the condition and privileges printed on the back hereof...

(emphasis supplied)

Payment of interest on the premium amounts, from the respective dates of remittance of premiums, is alien to the concept of life insurance. In this case, the assured died on 5.12.1997 prior to the date of maturity. Therefore the reduced sum as a paid up policy became due and payable without any interest on 5.12.1997. The claim was settled by payment of Rs. 113,750/- on 26.3.1998, within three months from the date of intimation of death. Therefore, under the contract, no interest is payable by LIC.

11. Where a statute provides for payment of interest, such interest will have to be paid in accordance with the provisions of such statute. Admittedly there is no enactment, or rules made under any enactment, either relating to contracts in general or insurance in particular, which provides for payment of interest in regard to amount payable under such a policy.

12. Let us now consider the provisions of Interest Act, 1978 ('Act' for short) which deals with payment of interest upto the date of suit/claim. The Act was enacted to consolidate and amend the law relating to the allowance of interest in certain cases. The objects and reasons states that the Act was enacted to prescribe the general law of interest in a comprehensive and precise manner, which becomes applicable in the absence of any contractual or statutory provision specifically dealing with interest. Sub-section (1) of Section 3 of the Act provides that in any proceedings for the recovery of any debt or damages, or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, --

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in that regard in a written notice given by the person entitled or the person making the claim to the

person liable that interest will be claimed, to the date of institution of the proceedings.

Sub-section (3) of Section 3 makes it clear that nothing in Section 3 shall apply in relation to any debt or damages upon which interest is payable as of right, by virtue of any agreement, or any debt or damages upon which payment of interest is barred, by virtue of an express agreement. Clause (a) of Section 2 of the Act defines 'court' as including a tribunal and an arbitrator; Clause (c) of Section 2 defines 'debt' as any liability for an ascertained sum of money and includes a debt payable in kind but does not include a judgment debt; and Clause (b) defines 'current rate of interest'. Sub-section (1) of Section 4 of the Act provides that notwithstanding anything contained in Section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law. Sub-section (2) of Section 4 provides that notwithstanding what is stated in Section 3 or Section 4(1) of the Act, in the cases of money deposited as security for performance of an obligation, interest is payable from the date of deposit; and in the case of money payable by virtue of a fiduciary relationship, money/property obtained/ retained by fraud and money due as dower/maintenance, interest is payable from the date of cause of action. A claim for interest on the amounts of premium paid, from the respective dates of payment of premium to date of settlement of claim, does not find support from any of the provisions of the Act.

13. Even assuming that interest can be awarded on grounds of equity, it can be awarded only on the reduced sum to be quantified and paid from the date when it becomes due under the policy (that is on the date of death of the assured) and not from any earlier date. We do not propose to examine the question as to whether interest can be awarded at all, on equitable grounds, in view of the enactment of Interest Act, 1978 making a significant departure from the old Interest Act (of 1839). The present Act does not contain the following provision contained in the proviso to Section (1) of the old Act : "interest shall be payable in all cases in which it is now payable by law." How far the decisions of this Court in *Satinder Singh v. MANU/SC/0292/1961 : Umrao Singh etc.* [1961]3SCR676 and *Hirachand Kothari (D) by LRs. v. MANU/SC/0278/1985 : State of Rajasthan and Anr.* 1985(1)SCALE1131 and the decision of the Privy Council in *Bengal Nagpur Railway Co. Ltd. v. MANU/PR/0017/1937, Rultanji Ramji* holding that interest can be awarded on equitable grounds, all rendered with reference to the said proviso to Section (1) of old Interest Act (Act of 1839), will be useful to interpret the provisions of the new Act (Act of 1978) may require detailed examination in an appropriate case.

14. In this case, we have already noticed that the reduced sum calculated as per the Table in Condition No. (4) of the Policy, became due only on the death of the assured. No interest is payable either under the contract of insurance, or under any statute, or under the Interest Act, 1978 from the respective dates of payment of premium to date of settlement of claim. Therefore the District Forum, the State Commission and the National Commission committed a serious error in awarding such interest.

15. This takes us to the question whether the decision in *Harshad J. Shah* (supra) lays down any

principle of law that LIC should pay such interest on the premium amounts, from the dates of payment of premium, as assumed by the Consumer Forum, State Commission and National Commission. We have carefully examined the said decision and find that no such principle is enunciated therein. In that case, one J. took out four insurance policies on 6.3.1986 through a general agent of LIC. The insured paid the first and second premiums. The third half-yearly premium which fell due on 6.3.1987 was not paid within the prescribed period. On 4.6.1987, the general agent of LIC obtained from J a bearer cheque dated 4.6.1987 for Rs. 2,730/-, (being the half-yearly premium in regard to the four policies), encashed the cheque through his son, and deposited the premium with LIC on 10.8.1987. In the meanwhile, the insured died on 9.8.1987. The widow of the deceased, as the nominee under the policy, made a claim with LIC for payment of the sum assured under the four policies. It was repudiated by the LIC on the ground that the policies had lapsed on account of non-payment of half-yearly premium which fell due on 6.3.1987, within the grace period. The widow of the insured submitted a complaint to the State Commission claiming the sum assured under the said 4 policies, namely, Rs. 4,32,000/-. The State Commission held that LIC was negligent in its service to the policyholder and directed LIC to settle the claim. On the other hand, the National Commission held that the Insurance Agent was not acting as agent of LIC in receiving the bearer cheque from the insured and therefore, LIC was not liable. That order was challenged by the claimant before this Court. The question that arose for consideration of this Court in that case was whether the payment of premium in respect of a life insurance policy by the insured to the general agent of the LIC can be regarded as payment to the insurer so as to constitute a discharge of liability of the insured. This Court answered the said question in the negative. No other question was raised or considered by this Court. Consequent to its decision, the appeal was disposed of by this Court with the following directions:

For the reasons aforementioned, **we are unable to uphold the claim of the appellants.** No ground is made out for interfering with the decision of the National Commission that Respondent 3 in receiving the bearer cheque for Rs. 2730 from the insured was not acting as an agent of the LIC. **But keeping in view the facts and circumstances of the case we direct the LIC to refund the entire amount of premium paid to the LIC on the four insurance policies to Appellant 2 along with interest @ 15% per annum. The interest will be payable from the date of receipt of the amounts of premium.**

[Emphasis supplied]

What requires to be noticed in that case, is that the default having occurred after payment of premium for only one year, there was no question of application of any 'non-forfeiture provision', nor was it permissible to treat the policy as subsisting as a paid-up policy for a reduced sum. Therefore nothing was payable by LIC under the policy. Consequently there was no direction to pay any amount under or in pursuance of the policy, nor any direction for payment of interest. The claim based on the policy was completely rejected. This court however found that a sum of Rs. 2730/- had been remitted after the death of the insured, which was not legally due or payable

to LIC. Therefore, it directed refund of the said sum of Rs. 2730/- wrongly paid as 'premium' with interest from the date of its payment. Therefore what was awarded was not interest on any sum payable by LIC under the policy or in pursuance of the policy, but interest on the sum of Rs. 2730/- which was found to have been remitted to LIC, *de hors* the policy, on 10.8.1987, to retain which, LIC had no legal right. The sum of Rs. 2730/- though paid as 'premium' on 10.8.1997 and referred to by this Court as 'premium' for convenience, was not really due to LIC as 'premium' as the policy had lapsed and the insured had died before that date. There was no claim for refund of Rs. 2730/- and the question relating to refund of Rs. 2730/- was not the subject matter of the claim. Therefore, it is clear that the direction to refund Rs. 2730/- with interest from the date of its payment was not by way of elucidation of any principle of law nor based on interpretation of any contractual term. This Court while rejecting the claim in toto, apparently, in exercise of power under Article 142, to do complete justice between the parties, directed refund of Rs. 2730/- with interest from the date of its payment, on the special facts of that case.

16. As contrasted from *Harshad J. Shah's* case (supra), in this case the amount paid (Rs. 1,13,750/-) is a contractual liability of LIC under condition No. 4 of the policy to pay a reduced sum by treating the policy as a paid up policy, on default. The award of interest in *Harshad J. Shah's* case (supra), being followed by the forum and commissions, is a classic case of a direction issued by this Court in exercise of Article 142 on the special facts, being wrongly interpreted as a general principle of law laid down by this Court.

17. We, therefore, allow this appeal and hold that the LIC is not liable to pay any interest on the sum of Rs. 1,13,750/-.

18. However, we find that the following order had been passed on 7.8.2000 while granting leave:

Learned Solicitor General has placed on record copy of the communication received by the instructing counsel dated 26th July, 2000, according to which amount payable to the respondent, as per directions of the Consumer Disputes Redressal Commission, have already been paid. It is submitted that irrespective of the result of the appeal, the amount which stands paid, shall not be sought for any adjustment, in the peculiar facts and circumstances of the case and no relief would be sought in that behalf against the respondent. It is submitted that the question of law involved in the case is of great importance and likely to arise in other cases.

In view of it, this decision does not render the respondent liable to refund any amount already received in pursuance of the order of the consumer forum, even though we have held that the respondent is not entitled to any interest on Rs. 1,13,750/-. We may clarify the contents of this para is purely based on a concession made on 7.8.2000.

MANU/SC/0778/2008

Equivalent Citation: 2008ACJ1040, AIR2008SC1310, 2008(2)ALLMR(SC)784, 2008(6)ALT8(SC), 2008 1 AWC(Supp)769SC, 2008BusLR446(SC), 2(2008)CLT834, I(2008)CPJ81(SC), 2008GLH(2)301, 2008GLH(301)2, (2008)3GLR2304(SC), JT2008(2)SC250, 2008-2-LW692, 2008(3)MhLj584, 2008(3)MhLJ584(SC), (2008)2MLJ1034(SC), RLW2008(3)SC2714, 2008(2)SCALE279, (2008)3SCC382 **Add**

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 1089 of 2008 (Arising out of SLP (C) No. 12792 of 2005)

Decided On: 07.02.2008

Appellants: Life Insurance Corporation of India

Vs.

Respondent: Jaya Chandel

Hon'ble Judges/Coram:

Dr. Arijit Pasayat and P. Sathasivam, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: P.S. Patwalia, Sr. Adv. and Indra Sawhney, Adv

For Respondents/Defendant: Pragati Neekhara, Suryanarayana Singh and Dharmendra Kumar Sinha, Advs.

Subject: Insurance

Subject: Consumer

Catch Words

Mentioned IN

Acts/Rules/Orders:

Insurance Act, 1938 - Section 2, Insurance Act, 1938 - Section 2B, Insurance Act, 1938 - Section 2D, Insurance Act, 1938 - Section 3, Insurance Act, 1938 - Section 10, Insurance Act, 1938 - Section 11, Insurance Act, 1938 - Section 13, Insurance Act, 1938 - Section 14, Insurance Act, 1938 - Section 15, Insurance Act, 1938 - Section 18, Insurance Act, 1938 - Section 20, Insurance Act, 1938 - Section 21, Insurance Act, 1938 - Section 22, Insurance Act, 1938 - Section 23, Insurance Act, 1938 - Section 25, Insurance Act, 1938 - Section 26, Insurance Act, 1938 - Section 27A, Insurance Act, 1938 - Section 28A, Insurance Act, 1938 - Section 31, Insurance Act, 1938 - Section 33, Insurance Act, 1938 - Section 35, Insurance Act, 1938 - Section 36, Insurance Act, 1938 - Section 37, Insurance Act, 1938 - Section 38, Insurance Act, 1938 - Section 39, Insurance Act, 1938 - Section 40, Insurance Act, 1938 -

Section 40A, Insurance Act, 1938 - Section 42, Insurance Act, 1938 - Section 43, Insurance Act, 1938 - Section 43(1), Insurance Act, 1938 - Section 43(2), Insurance Act, 1938 - Section 43(3), Insurance Act, 1938 - Section 44, Insurance Act, 1938 - Section 45, Insurance Act, 1938 - Section 46, Insurance Act, 1938 - Section 47A, Insurance Act, 1938 - Section 50, Insurance Act, 1938 - Section 51, Insurance Act, 1938 - Section 52, Insurance Act, 1938 - Section 64AB, Insurance Act, 1938 - Section 102, Insurance Act, 1938 - Section 103, Insurance Act, 1938 - Section 104, Insurance Act, 1938 - Section 105, Insurance Act, 1938 - Section 106, Insurance Act, 1938 - Section 107, Insurance Act, 1938 - Section 108, Insurance Act, 1938 - Section 109, Insurance Act, 1938 - Section 110, Insurance Act, 1938 - Section 110A, Insurance Act, 1938 - Section 110B, Insurance Act, 1938 - Section 110C, Insurance Act, 1938 - Section 111, Insurance Act, 1938 - Section 113, Insurance Act, 1938 - Section 114, Insurance Act, 1938 - Section 116A, Insurance Act, 1938 - Section 119, Insurance Act, 1938 - Section 121, Insurance Act, 1938 - Section 122, Insurance Act, 1938 - Section 123; Life Insurance Corporation Act, 1956 - Section 43

Prior History:

From the final Order dated 17.1.2005 of the National Consumer Disputes Redressal Commission, New Delhi in R.P. No. 2068 of 2001.

Disposition:

Appeal allowed

Case Note:

Consumer Protection Act, 1986 - Sections 2 (1) (g) and 21—Insurance Act, 1938—Sections 43 and 64VB—Deficiency in service—Insurance claim – Policy lapsed—Under condition 3 it could be revived during life-time of assured—Cheque for premium admittedly received after death of assured—Further revival takes effect only after same approved by appellant Corporation—And specifically communicated to life insured—In present case, this is not situation—Section 43 enumerates various sections of Insurance Act applicable to Corporation—Section 64VB not one of them—Orders of consumer fora unsustainable—And set aside.

Ratio

Decidendi:

"Revival of a policy, which was lapsed due to non-payment of premium in time, takes effect only after the same is approved by the Corporation and is specifically communicated to the life insured."

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission (in short the "National Commission") dismissing the Revision Petition filed by

the appellant. Challenge before the Commission was to the order passed in appeal by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (in short the 'State Commission') which in turn had upheld the order passed by the District Forum, Shimla (in short the 'District Forum').

3. Background facts in a nutshell are as follows:

One Karan Singh Chandel (hereinafter referred to as the 'deceased') had taken a Life Insurance Policy and was insured for a sum of Rs. 1,50,000/-. The annual premium payable was Rs. 12,821/-. The policy was taken on 28.3.1994. The annual premium which was to be paid on or before 28.3.1995 was not paid. In terms of the policy, the same became inoperative after one month. The insured died on 1.7.1995. A cheque drawn on Jogindra Cooperative Bank Ltd. for an amount of Rs. 12,821/- purportedly on account of premium along with late fee of Rs. 189/- was issued by one Prakash Chand Thakur on 27.6.1995. The same was received on 12.7.1995. According to the claimant i.e. widow of the deceased, the cheque was issued before the death of the insured and therefore, the appellant could not have repudiated the claim.

4. The stand of the present appellant was that the policy had lapsed due to non-payment of premium in time. This plea was not accepted by the District Forum on the ground that the cheque was claimed to have been issued on 12.7.1995, but is presumed to have been received earlier than that date. The State Commission held that in any event the amount was received within the grace period and therefore, the claim could not have been repudiated. Accordingly the appeal filed by the appellant was dismissed. The National Forum dismissed the Revision holding that Section 64VB of the Insurance Act, 1938 (in short the 'Insurance Act') was applicable where the premium is tendered by postal money order or cheque sent by post and the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. Therefore, it was held that there was revival. It did not accept the stand of the appellant that the revival was not a matter of right.

5. In support of the appeal, learned Counsel for the appellant submitted that the District Forum, the State Commission and the National Commission failed to notice certain relevant factors. It was not explained as to why the cheque was issued by Prakash Chand Thakur and not by the insured. This is sufficient to show that subsequently a cheque was issued to regularize the policy. Further the cheque was received on 12.7.1995 much after the death and this itself is sufficient to show that the cheque was not issued prior to the death of the insured. The extract of the receipt register has been filed which shows that the cheque was received on 12.7.1995. The State Commission came to the conclusion that the cheque was issued during the grace period. This is also factually incorrect because the grace period is 30 days, the premium was due on 28.3.1995 and the cheque was issued much beyond the grace period. Additionally, Section 64VB does not apply to the appellant. In this context Section 43 of the Life Insurance Corporation Act, 1956 (in short the 'Act') has relevance. Reference is also made to Condition 2 of the policy.

6. In reply learned Counsel for the claimant submitted that it is not Condition 2 of the policy which is applicable, but Condition No. 3 which is applicable. It is stated that no adverse inference can be drawn because the insured had not signed the cheque and merely because the cheque was received after the death of the deceased that does not entitle the appellant to refuse a genuine claim.

7. Conditions 2 & 3 of the policy read as follows:

2. Payment of premium: A grace period of one month but not less than 30 days will be allowed for payment of yearly, half - yearly or quarterly premiums and 15 days for monthly premiums. If death occurs within this period and before the payment of the premium then due, the Policy will still be valid and the sum assured paid after deduction of the said premium as also the unpaid premiums falling due before the next anniversary of the Policy. If premium is not paid before the expiry of the days of grace the Policy lapses. If the Policy has not lapsed and the claim is admitted incase of death under a Policy where the mode of payment of premium is other than yearly, unpaid premiums if any falling due before the next Policy anniversary shall be deducted from the claim amount.

3. Revival of discontinued Policies: If the Policy has lapsed it may be revived during the life time of the Life Assured, but within a period of 5 years from the date of the first unpaid premium and before the date of maturity, on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be fixed by the Corporation from time to time compounding half yearly. The Corporation reserves the right to accept or decline the revival of discontinued policy. The revival of a discontinued policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the life assured.

8. The grace period is one month and therefore the State Commission was not justified in holding that the payment was made within the grace period. Condition 3 relates to revival of discontinued policy. A bare reading of the condition shows that it can be revived during the life time of the assured. In the instant case the cheque was admittedly received after the death of the assured. Further the revival takes effect only after the same is approved by the Corporation and is specifically communicated to the life insured. In the present case this is not the situation.

Further Section 43 of the Act reads as follows:

43. Application of the Insurance Act.

(1) The following section of the Insurance Act shall, so far as may be, apply to the Corporation as they apply to any other insurer, namely:-Sections 2, 2B, 3, 18, 26, 33, 38, 39, 31, 45, 46, 47A, 50, 51, 52, 110A, 110B, 110C, 119, 121, 122 and 123.

(2) The Central Government shall as soon as may be after the commencement of this Act,

by notification in the Official Gazette, direct that the following sections of the Insurance Act shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification, namely:-Sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 43, 44, 102 to 106, 107 to 110, 111, 113, 114 and 116A.

1[(2A)] Section 42 of the Insurance Act shall have effect in relation to the issue to any individual of a licence to act as an agent for the purpose of soliciting or procuring life insurance business for the Corporation as if the reference to an officer authorised by the Controller in this behalf in Sub-section (1) thereof included a reference to an officer of the Corporation authorised by the Controller in this behalf.]

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the Insurance Act other than those specified in Sub-section (1) or Sub-section (2) shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification.

(4) Every notification issued under Sub-section (2) or Sub-section (3) shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after it is issued, and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

(5) Save as provided in this section, nothing contained in the Insurance Act shall apply to the Corporation.

9. Section 43 of the Act enumerates the various Sections of Insurance Act which have application to the Act and Section 64VB is not one of them. That being so also the National Commission was not justified in its conclusion about the applicability of that provision.

10. Looked at from any angle the orders passed by the District Forum, the State Forum and National Commission cannot be maintained and are set aside.

Appeal is allowed. There shall be no order as to costs.

MANU/SC/0186/1984

Equivalent Citation: 1984ACJ345, AIR71 1984 Supreme Court 1014,
[1984]56CompCas174(SC), 1984(1)SCALE561, (1984)2SCC719, [1984]3SCR350,
1984(16)UJ1040 

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 2197 of 1970

Decided On: 27.03.1984

Appellants: Life Insurance Corporation of India

Vs.

Respondent: Raja Vasireddy Komalavalli Kamba and Ors.

Hon'ble

Judges/Coram:

Sabyasachi Mukherjee and V. Balakrishna Eradi, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Y.S. Chitale, V.G. Shanker, K.L. Hathi, Sadhana and D.K. Chhaya, Advs

For Respondents/Defendant: T.S. Krishnamurthy Iyer, K.R. Choudhary and K.S. Choudhary, Advs.

Subject: Insurance

Catch Words

Mentioned IN

Acts/Rules/Orders:

Life Insurance Corporation of India Standing Order, 1960

Authorities Referred:

The Concise Oxford Dictionary Sixth Edition; Corpus Juris Secundum, Vol. XLV;
MacGillivray & Parkinson on Insurance Law, Seventh Edition; Halsbury's Laws of England
4th Edition

Prior History:

From the Judgment and Order dated April 16, 1970 of Andhra Pradesh High Court in Appeal
No. 431 of 1965

Case Note:

Insurance contract liability mere receipt and retention of premiums until after death of

applicant does not give rise to contract circumstances may be such that approval could be inferred from retention of premium execution of policy not an acceptance acceptance to be complete must be communicated to offer or either directly or by some definite act such as placing contract in mail test not intention alone when application so requires acceptance must be evidenced by signature of one of companys executive officers general rule that contract of insurance concluded only when party to whom offer has be made accepts unconditionally and communicates his acceptance to person making offer held, High Court was in error that there was concluded contract of insurance between deceased and Life Insurance Corporation.

JUDGMENT

Sabyasachi Mukharji, J.

1. This appeal is by a certificate granted on 18th September, 1970 by the High Court of Andhra Pradesh under Article 133(1)(a) of the Constitution as it stood at the relevant time against the Judgment and decree of the High Court dated 16th April, 1970. By the said Judgment and decree, the High Court of Andhra Pradesh had reversed the Judgment of the learned Subordinate Judge, Masulipatam dated 19th November, 1964 dismissing the suit of the plaintiffs-respondents against the appellant. Late Shri Raja Vasireddi Chandra Dhara Prashad was the husband of respondent No. 1 and father of the respondents No. 2 to 5 herein. The respondents filed a suit in the Subordinate Court of Sub-Judge being Original suit No. 2 of 1964 on 10th January, 1964. The short facts leading to this case are:

2. One Late Raja Vasireddi Chandra Dhara Prasad (hereinafter referred to as a 'deceased') died intestate on 12th January, 1961. He had filled a proposal for insurance for Rs. 50,000 on 27th December, 1960. There was medical examination by the doctor on the life of the deceased on 27th December, 1960. The deceased had issued two cheques for Rs. 300 and Rs. 220 respectively in favour of the appellant as first premium. Cheque for Rs. 300 was encashed by the appellant on 29th December, 1960. Cheque for Rs. 220 was dishonoured three times and finally encashed on 11th January, 1961. As mentioned hereinbefore, the deceased died on the day following i.e. on 12th January, 1961. On 16th January, 1961, the widow of the deceased, respondent No. 1 herein, wrote to the appellant intimating the death of the deceased and demanded payment of Rs. 50,000. The Divisional Manager, Masulipatam Branch, denied liability on behalf of the appellant Corporation on 28th January, 1961. Thereafter there was correspondence between the parties between 1st February, 1961 to 23rd December, 1963 wherein the respondents-plaintiffs had claimed the payment and the appellant had denied liability for the same.

3. On the 10th January, 1964, the plaintiffs filed the suit in the court of Subordinate Judge, Masulipatam. It was alleged in the plaint after setting out the facts which have been set out hereinbefore, that the medical examination report was submitted to the Appellant-corporation by Dr. Sri C. Sambasiva Rao, Approved Medical practitioner of the appellant in regard to the

medical examination of the deceased. A report described as "All the Friend's report" was duly sent to the appellant with regard to that proposal ; and all the preliminaries were completed and it was further alleged that the deceased was assured and told by the local agent and the Field Officer of the Corporation that the payment of the first premium would amount to the acceptance of the proposal and advised the deceased to pay the first premium in full. It was, further, stated that the said two cheques were encashed and the appellant had duly appropriated the amount and credited in the accounts towards the premium payable by the deceased. Therefore, it was stated that the deceased had fulfilled his part of the insurance contract and the appellant-Corporation by its overt acts of encashing the cheques and crediting the amounts in its accounts accepted the proposal of the deceased. In the premises it was said in the plaint that there was a concluded and valid insurance contract between the deceased and the appellant-Corporation and that the insurance contracted commenced on 11th January, 1961 being the date of the receipt of the balance towards premium by the Corporation. It was further stated in the plaint that the Office of the Divisional Manager of Masulipatam was the concerned authority to settle the claim of the plaintiffs-respondents and to pay the amount. The contention of the Corporation that the proposal was not accepted and as such there was no concluded insurance contract between the deceased and the Corporation, was untenable, according to the plaintiffs. It was alleged that with full knowledge of the completion of all the preliminaries, the Corporation had encashed the cheques issued towards the first premium and therefore it was the case of the plaintiffs-respondents that the encashment of the cheques amounted in those circumstances in law to an acceptance of the proposal of the deceased. It was further alleged that the appropriation of the amounts by the Corporation towards the first premium by the deceased was only consistent with the acceptance of the proposal. The case of the plaintiffs further was that in this case the first premium was not only received by the Corporation completely on 11th January, 1961 but it was also appropriated by it in its accounts and the said premium amount was received by the Corporation without any demur or qualification and that in any event the Corporation must be deemed to have waived by its conduct the formality, if any, of sending communication of its acceptance of the proposal. In the premises, the plaintiffs claimed the said amount along with interest at six per cent per annum from the date of refusal of payment till the date of payment of the demand.

4. Written statement was filed on behalf of the appellant. In the said written statement, after setting out the facts, it was denied that the payment of the first premium amounted to acceptance of the proposal and the allegation about the assurance given to the deceased as alleged in the plaint was not true nor the alleged assurance if any, valid under law. It was, further stated that the two cheques were not encashed and credited towards the premium account of the proposal but these were kept only in deposit in suspense account without any liability of the appellant. It was further stated that the averments in the plaint that the defendant Corporation cashed the above two cheques and appropriated the amounts and credited these in the account towards premium payable for the proposal were false. It was stated that on the death of the deceased, the amount covering two cheques were lying in the deposit and in the

suspense account of the Corporation and was not adjusted towards the premium since the proposal was not considered, the terms of acceptance was not fixed and the premium amount required for the proposal was not calculated. In those circumstances, the appellant Corporation claimed that there was no liability for the risk and as such the plaintiffs had no right to claim and there was no cause of action. It was categorically stated that the cheques were not credited and adjusted towards the premium accounts.

5. During the trial before the learned Subordinate Judge, five different issues were raised. It is not necessary to set out in detail those issues but the important and main issue was whether there was a concluded valid insurance contract between the deceased and the Life Insurance Corporation of India.

6. Both documentary and oral evidence were adduced at the Trial. The respondents-plaintiffs examined Shri R.V. Bhūpala Prasad, son of the deceased and the Corporation on its behalf examined Shri Jagannadhachari, the Superintendent of the Corporation branch at Guntur. He also produced ex. B-4, the review slip, prepared by the Branch office, Guntur and sent to the Divisional Officer, Masulipatam. In his deposition, he had stated that the Divisional Manager was the competent authority for accepting the proposal for Rs. 50,000. Normally it took some time for the Divisional Manager to accept. There was no communication from the Divisional Office to the Branch Officer accepting the proposal. He, further, stated that the amount would be transferred into the first premium register after the proposal was accepted and the risk covered. He had produced the account books, namely; deposit account book and the first premium account book of the Branch Office at Guntur.

7. Shri Brahmandrao Ramiah, Assistant Divisional Manager of the Life Insurance Corporation office at Madras was also examined as the second witness of the defendants. He had further stated that the proposal form was sent from the office at Guntur to the Divisional Office at Masulipatam, and Ex. B-1 to B-4 and B-8 were sent in this connection. He further stated that according to the financial powers Standing Order, it was the Divisional Manager who was competent to accept a proposal for Rs. 50,000 Ex. B-13 is the copy of the Standing Order. The purpose of review slip Ex. B-4 was to enable the Divisional Officer to assess the risk and take a decision according to the deponent. In this connection we may refer Ex. B-14 which is the Life Insurance Corporation of India's Proposal Review Slip regarding proposal in the case of the deceased. The endorsement therein of the assistant Divisional Manager read as follows:

NOTES AND DECISION : may be accepted at O.R.

WITH E.D.B.

8. Shri Brahmandrao Ramiah had further stated that the papers were scrutinised by him in addition to the scrutiny by the concerned clerks. He stated that the endorsement marked as Ex. B-14 was initialled by him. He further stated that the letters 'DM' were also written by him indicating that the papers should go to the Divisional Manager on Ex. B-4. He reiterated that

the order of acceptance would not be communicated to the party if all the formalities were not complied with ; this policy, he stated, was not accepted. When the acceptance was complete and when there was no requirement necessary and if the full first installment was in deposit, it would be adjusted towards premium amount, he stated.

9. In this connection before the learned Trial Judge, reliance was placed on the Life Insurance Corporation of India Standing Order, 1960 (Financial Powers). Chapter III of the Standing Order dealt with the powers of the different authorities for, inter alia, 'Underwriting and Revivals of Policy'. The relevant portion of the said Standing Order read as follows :-

"Nature of Power	Authority	Extent of Finan- cial power (up to and Including)	
		Rs.	
1. Underwriting and Revivals:			
(a) Standard lives and revival on original terms	Section Head Supdt or J.O. A.S.O. A.D.M. D.M.	2,000 5,000 10,000 25,000 1,00,000	(Sum Proposed) (-do-) (-do-) (-do-) (-do-)

Note : Proposals on standard lives for more than Rs. 1,00,000 should be referred to the Central Underwriting section.

10. Learned Subordinate Judge by his judgment dated 19th November, 1964 held that there was no concluded contract. He held that as per the prospectus of Life Insurance Corporation of India the risk under the Corporation policy commenced on the date of receipt of the first premium in full or the date of acceptance whichever was later and the second installment of the premium falls due on a date calculated from such date of commencement of risk. Learned Trial Judge was of the opinion that the documents in this case coupled with evidence on behalf of the Appellant-Corporation established that the proposal sent by the deceased was for some reason or other not accepted by the Divisional Office by the time the deceased had died. The Trial Court therefore held that there was no concluded valid insurance contract between the deceased and the Corporation. The Trial Court further noted that it was significant that the case set out in the plaint and the basis of the claim made in the notices sent to the Corporation was not that the proposal was as a matter of fact accepted by the Divisional Manager, on the other hand, claim was that it should be deemed to have been accepted. Considering the evidence and the averments, the Learned Subordinate Judge came to the conclusion that the accounts do not show the position alleged by the plaintiffs-respondents that the amounts paid were appropriated towards the premium and the Trial Court was of the opinion that encashing of the cheques and the want of any further action to be done by the deceased did not themselves create a contract

of insurance between the deceased and the Corporation. The Trial Court was of the opinion that the proposal must be accepted by the Divisional Manager and that alone could give rise to a valid contract of insurance which never happened in this case. The Trial Court further expressed the view that the other averments in the claim that the deceased was assured and told by the local agent and the field officer of the Corporation that the payment of the first premium would amount to the acceptance of the proposal were not established and even if such a representation was made, that did not alter the position as under the rules the payment of the premium could never amount to the acceptance of the proposal if the proposal was not otherwise accepted. In the result, the suit filed by the respondents-plaintiffs was dismissed with costs. Being aggrieved by the said decision, the plaintiffs-respondents filed appeal in the High Court. The appellants before the High Court also filed civil miscellaneous petition praying that in the circumstances stated in the affidavit filed therewith the High Court might be pleased to direct the Life Insurance Corporation to produce certain documents viz., proposals, review slips and proposal dockets and the connected papers of the present case and statements furnished by the Divisional Office to the Zonal Office showing the new business in the year 1960 and proposal register work of Divisional Office for the year 1960.

11. The High Court directed the Life Insurance Corporation to produce the documents referred to above. The High Court by its judgment dated 14th April, 1970 held after considering the standing order Ex. B-13 and the various documents produced for the first time on record that there was acceptance of proposal and like other contracts, the contract of insurance was complete by offer and acceptance. In coming to this conclusion the High Court relied on the alleged adjustment and the endorsement of the review slip recommending that the proposal "may be accepted" made on the relevant file by the Assistant Divisional Manager. Relying on certain other documents which were called for, for the first time by the High Court relating to certain other cases where only the Assistant Divisional Manager made similar endorsement, the High Court came to the conclusion that there was a valid contract. The High Court was of the view that the plea that Divisional Manager was the only authority to accept had not been categorically taken in the written statement filed on behalf of the Corporation. On the other hand, there was a general statement that there was no concluded contract. The High Court was of the view that having regard to the conduct of the parties, there was a concluded contract. The High Court took the view that Ex. B-13 dealing with Chapter III of the Financial Powers did not categorically deal with the acceptance of proposals. The High Court was of the view that the Corporation had not filed any evidence of any order prohibiting other officers one step below in rank, in this case the Assistant Divisional Manager, to exercise the power of Divisional Manager.

12. In our opinion, the High Court was in error in appreciating the facts and the evidence in this case. We cannot accept the High Court's criticism with the averment in the written statement that there was not sufficient pleading that there was no concluded contract and non-acceptance of the proposal was not sufficient averment that the Divisional Manager was the

only competent authority to accept the proposal. The High Court, in our opinion, was also wrong in its view about the powers of the different authorities under Chapter III of the Standing Order, 1960 dealing with the financial powers. Indeed there was no evidence that the Assistant Divisional Manager had accepted the proposal on the contrary he in his deposition as we have indicated before had stated otherwise. He had stated that the purpose of review slip was to enable the Divisional Manager to assess the risk and take a decision. He had never stated that he had taken a decision to accept the proposal. The allegation that there was assurance on behalf of the field officer and local agent to the deceased that the payment of first premium would amount to the acceptance of the proposal cannot also be accepted, firstly because factually it was not proved and secondly because there was no evidence that such could have been the deposition in law.

13. When an insurance policy becomes effective is well settled by the authorities but before we note the said authorities, it may be stated that it is clear that the expression "underwrite" signifies 'accept liability under'.

14. The dictionary meaning also indicates that.

(See in this connection The Concise Oxford Dictionary Sixth Edition p. 1267.)

15. It is true that normally the expression "underwrite" is used in Marine insurance but the expression used in Chapter III of the Financial powers of the Standing Order in this case specifically used the expression "underwriting and revivals" of policies in case of Life Insurance Corporation and stated that it was the Divisional Manager who was competent to underwrite policy for Rs. 50,000 and above.

16. The mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance.

17. See in this connection the statement of law in Corpus Juris Secundum, Vol. XLV page 986 wherein it has been stated as :-

The mere receipt and retention of premiums until after the death of applicant does not give rise to a contract, although the circumstances may be such that approval could be inferred from retention of the premium. The mere execution of the policy is not an acceptance ; an acceptance, to be complete, must be communicated to the offer or, either directly, or by some definite act, such as placing the contract in the mail. The test is not intention alone. When the application so requires, the acceptance must be evidenced by the signature of one of the company's executive officers.

18. Though in certain human relationships silence to a proposal might convey acceptance but in the case of insurance proposal silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as, prima facie,

acceptance must be communicated to the offeror. The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Whether the final acceptance is that of the assured or insurers, however, depends simply on the way in which negotiations for an insurance have progressed.

19. See in this connection statement of law in MacGillivray & Parkington on Insurance Law, Seventh Edition page 94 paragraph 215.

20. Reference in this connection may be made to the Statement of law in Halsbury's Laws of England 4th Edition in paragraph 399 at page 222.

21. Having regard to the clear position in law about acceptance of insurance proposal and the evidence on record in this case, we are, therefore, of the opinion that the High Court was in error in coming to the conclusion that there was a concluded contract of insurance between the deceased and the Life Insurance Corporation and on that basis reversing the judgment and the decision of the learned Subordinate Judge.

22. The appeal must, therefore, be allowed. We however record; that in view of the fact that such a long time has elapsed and further in view of the fact that principal amount together with interest amounting to about Rs. 85,000/- have already been paid to the wife of the deceased and his children, the Life insurance Corporation in this case does not insist on the full repayment of the sum paid and counsel on behalf of the Life Insurance Corporation has stated that they would accept if half of what has been received by the respondents, namely principal together with interest is paid back to the Corporation. We order accordingly that the respondents will therefore pay back half of the actual amount received both of the principal together with interest within three months from this date.

23. In the facts and circumstances of the case there will be no order as to costs in this Court.

24. With the above observations, the appeal is allowed.

MANU/SC/0459/2005

Equivalent Citation: 2005ACJ2079, AIR2005SC3349, 2006(3)ALD24(SC), 2005(5)ALLMR(SC)1133, 2005(6)ALT58(SC), 2005 3 AWC(Supp)2786SC, 2005(3)BLJR1816, 2006(1)BomCR354, [2005]126CompCas905(SC), III(2005)CPJ31(SC), [2005(4)JCR56(SC)], JT2005(7)SC240, 2006-1-LW582, 2005(4)PLJR122, (2005)141PLR447, (2005)6SCC274, [2005]Supp(2)SCR342, 2005(2)UJ1131 **Add +**

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 4806 of 2005 (Arising out of Special Leave Petition (Civil) No. 2795 of 2003)

Decided On: 05.08.2005

Appellants: **Life Insurance Corporation of India**

Vs.

Respondent: **Mani Ram**

Hon'ble

Judges/Coram:

R. C. Lahoti, C.J., C. K. Thakker and P. K. Balasubramanyan, JJ.

Counsels:

G.L. Sanghi, Sr. Adv., A.V. Rangam, A. Ranganadhan and Buddy A. Ranganadhan, Advs

Subject: Consumer

Subject: Insurance

Catch Words

Mentioned IN

Acts/Rules/Orders:

Consumer Protection Act, 1986 - Section 12

Cases Referred:

Life Insurance Corporation of India and Anr. v. Dharam Vir Anand, MANU/SC/0651/1998

Prior History:

From the Judgment and Order dated 10.10.2002 of the National Consumer Disputes Redressal Commission, New Delhi in R.P. No. 1875 of 2002

Citing Reference:

Discussed

Case Note:

Consumer Protection Act, 1986 - Sections 2 (1) (g) and 12--Deficiency in service--

Insurance claim--Premium paid on 21.8.1995 but policy made effective from 28.4.1995 on request of assured--Period of policy thus was from April 28, 1995 to April 28, 1996, i.e., one year--One month grace period available for paying premium--Thus, premium to be paid latest by May 28, 1996--As per condition of policy, policy lapsed on May 28, 1996 for non-payment of premium even within grace period--Assured died in accident on August 2, 1996, i.e. after policy had lapsed--Insurance not liable to pay amount assured--All consumer fora below committed illegality in holding otherwise--Orders set aside--However, no recovery to be made from complainant of amount paid pursuant to orders of Consumer Fora.

JUDGMENT

C.K. Thakker, J.

1. Leave granted.

2. This appeal is filed by the Life Insurance Corporation of India ("Insurance Company" for short) against the order passed by the District Consumer Disputes Redressal Forum, Bilaspur (Himachal Pradesh), confirmed by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla and also confirmed by the National Consumer Disputes Redressal Commission, New Delhi.

3. Few facts giving rise to the present appeal may now be stated.

4. Mani Ram-respondent herein, son of one Budhu Ram, resident of village Khatehar, Pargana and Tehsil Sadar, District Bilaspur (HP) filed a complaint under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act"), before the District Forum, Bilaspur. In the complaint, it was inter alia alleged by the complainant that his son Ashok Kumar had been insured with the appellant-Insurance Company on August 21, 1995 and premium amount of Rs. 5215/- was paid on the same day. According to the complainant, the next installment of premium was due on August 21, 1996. Ashok Kumar - insured, however, died in an accident on August 2, 1996 at Barmana as the boundary wall of the D.A.V. School fell on him and he was crushed under the debris. The complainant, in view of the subsisting policy, requested the appellant-Insurance Company to pay the insurance claim amount of Rs. 2,50,000/- to the complainant, but under the lame and false excuses, the Insurance Company did not pay the amount. Finally, by a communication dated August 11, 1997, the Insurance Company refused to pay any amount. The deceased was unmarried. It was asserted by the complainant that he was the nominee of deceased Ashok Kumar as the father. Since the amount was not paid, the complainant was constrained to approach the District Forum. Accordingly a claim of Rs. 2,50,000/- was made along with interest and damages on account of mental torture and

financial loss suffered by the complainant.

5. The appellant-Insurance Company resisted the claim of the complainant by filing a written reply. A preliminary objection was raised against the maintainability of the complaint on the ground that the policy had lapsed due to non-payment of premium within the prescribed period and hence, the complainant had no right to claim anything. The complaint was, therefore, liable to be dismissed. It was stated that deceased Ashok Kumar was insured with the Insurance Company. It was also admitted that the premium amount was paid to the Insurance Company on August 21, 1995 but the policy holder got the policy effected from a back date, i.e. from April 28, 1995. According to the Insurance Company, therefore, the next premium was due and payable after one year, i.e., on April 28, 1996. Giving benefit of grace period of one month, the premium amount was required to be paid latest by May 28, 1996. No premium, however, was paid on April 28, 1996 nor till May 28, 1996 and the policy lapsed. Since the deceased Ashok Kumar met with an accident on August 2, 1996, there was no subsisting policy in favour of the insured inasmuch as it lapsed on May 28, 1996, the Insurance Company could not be held liable and the complainant was not entitled to any amount.

6. The District Forum considered the rival contentions of the parties and held that the deceased was assured for Rs. 50,000/- on August 21, 1995. It observed that no doubt the policy was backdated to April 28, 1995, but as the premium was paid on August 21, 1995, next premium became due on August 21, 1996. Since Ashok Kumar met with an accident and died on August 2, 1996, the Insurance Company was liable. It accordingly awarded an amount of Rs. 50,000/- with interest @ 12% p.a. and costs of Rs. 500/-.

7. Being aggrieved by the order passed by the District Forum, both, the complainant as well as Insurance Company filed appeal before the State Commission. The grievance of the Insurance Company was that since the policy lapsed on April 28, 1996, it could not have been held liable for an accidental death of Ashok Kumar on August 2, 1996 and the District Forum had committed an error of law in holding the Insurance Company liable. The grievance of the complainant, on the other hand, was that since Ashok Kumar died due to accidental death, as per the terms and conditions of the Policy, the complainant was entitled to a sum of Rs. 2,50,000/- and the District Forum was in error in awarding Rs. 50,000/- only. The State Commission heard both the appeals and dismissed them by a common judgment. The State Commission relied upon the decision of this Court in *Life Insurance Corporation of India and Anr. v. Dharam Vir Anand*, MANU/SC/0651/1998 : (1998)7SCC348.

8. The Insurance Company approached the National Commission against the orders passed by the Fora below. The National Commission, however, dismissed the Revision Petition by observing that concurrent findings had been recorded that the policy was subsisting and the Insurance Company was liable under the said policy. According to the National Commission, since the first premium was paid on August 21, 1995, the next premium was due on August 21, 1996.

9. We have heard the learned counsel for the parties. Mr. G.L. Sanghi, learned senior counsel for the Insurance Company submitted that the Fora below have committed an error of law in holding that the policy was subsisting. The counsel admitted that the first premium was paid on August 21, 1995, but in the proposal dated August 19, 1995, a request was made to make the policy effective with back date from April 28, 1995. The request was granted by the Insurance Company and the policy was issued. The period of policy was thus from April 28, 1995 to April 28, 1996. The counsel submitted that deposit/payment of premium amount was not at all relevant as the policy was for a period of one year from April 28, 1995. It was submitted that the next premium was due on April 28, 1996 and the amount ought to have been paid. Grace period of one month was available to the insured and payment ought to have been made by May 28, 1996. It is not disputed even by the complainant, submitted the counsel, that no payment was made on or before May 28, 1996. The policy, therefore, lapsed on May 28, 1996. Since the assured died on August 2, 1996, the Insurance Company was not liable. It was also submitted that the ratio laid down in Dharam Vir Anand does not apply to the facts of the case.

9. The learned counsel for the respondent, on the other hand, submitted that the contentions raised by the appellant Insurance Company were considered by the Fora below and in the light of the facts and circumstances as also the decision of this Court, orders were passed which call for no interference.

10. The question for our consideration, therefore, is whether on August 2, 1996, the policy could be said to be valid and subsisting. If the reply is in affirmative, obviously, the complainant was entitled to the amount awarded. If, on the other hand, the policy lapsed, as contended by the Insurance Company, no claim could have been put forward by the complainant and the Insurance Company was right in rejecting the claim.

11. So far as the factual position is concerned, there is no dispute between the parties. Deceased Ashok Kumar was insured by the Insurance Company and the first premium was paid on August 21, 1995. At the request of the insured, however, the policy was back-dated with effect from April 28, 1995. In our opinion, therefore, the learned counsel for the Insurance Company is right in submitting that one year came to an end on April 28, 1996 and the insured was liable to pay premium on that date as it became due and payable. Taking into account grace period of one month, premium amount ought to have been paid latest by May 28, 1996. Admittedly, no such payment was made either in April, 1996 or in May, 1996. We are impressed by the argument of the learned counsel for the Insurance Company that in the circumstances, the policy lapsed on May 28, 1996.

12. In this connection, it may be profitable to refer to the terms and conditions of the policy. The policy stated that the date of commencement was April 28, 1995 and the date of maturity would be April 28, 2010 as it was for a period of fifteen years. It is further stated that the policy of assurance "shall be subject to the conditions and privileges" printed on the back of the policy. On the back of the policy, those conditions and privileges have been printed.

Condition 2 thereof, is material for our purpose and reads thus:

2. **"Payment of premium:** A grace period of one month i.e. not less than 30 days will be allowed for payment of yearly, half-yearly, or quarterly premiums and 15 days for monthly premiums. If death occurs within this period and before the payment of the premium then due, the Policy will be valid and the sum assured paid after deduction of the premium as also the unpaid premium/s falling due before the next anniversary of this Policy. *If the premium is not paid before the expiry of the days of grace, the Policy lapses.*"

(emphasis supplied)

13. From the above condition, it is abundantly clear that payment of premium due had to be made within a grace period of one month. If such payment was made within the said period, the policy would be treated as valid and the assured would be paid the amount to which he was entitled after deducting the premium amount. But it was also made clear that if the premium was not paid before the expiry of the days of grace, the policy would lapse. As we have already observed hereinabove, the material date was not the date of deposit/payment of premium amount which was August 21, 1995, but the date of policy which was April 28, 1995. Since it was yearly, the payment was due on April 28, 1996, but the assured was entitled to grace period of one month up to May 28, 1996. Neither the premium was paid on April 28, 1996 nor on May 28, 1996. As per condition No. 2, policy lapsed on May 28, 1996. In the eye of law, there was no subsisting policy, on August 2, 1996. Insurance Company was, therefore, wholly justified in rejecting the claim of the complainant and no exception can be taken against such a decision.

14. The learned counsel for the respondent no doubt relied on the decision of this Court in *Dharam Vir Anand*. The State Commission also referred to the said decision and observed that the point was covered by the ratio laid down therein and the complainant was entitled to the benefit of that decision. In our opinion, however, the submission of the learned counsel for the Insurance Company is well-founded that it was in the light of the fact-situation of that case that the Court decided the matter in favour of the complainant.

15. In *Dharam Vir Anand*, the complainant had taken a policy of insurance on the life of his minor daughter. The policy was issued on March 31, 1990. The risk under the policy was, however, backdated at the request of the complainant taking advantage of the option given to him in that regard by the Insurance Company which was May 10, 1989 and the premium was paid. On November 15, 1992, the assured committed suicide. The complainant lodged a claim which was refuted by the Company.

16. The question before this Court was whether on that date i.e. November 15, 1992, the policy was subsisting or not? If the date of issuance of policy was to be taken into account, the policy was subsisting. But if back-date would be considered as relevant and material, three years were

over and there was no subsisting policy. The Court considered Clause 4-B of the policy which read as under:-

"4-B. Notwithstanding anything mentioned to the contrary, it is hereby declared and agreed that in the event of death of life assured occurring as a result of intentional self-injury, suicide or attempted suicide, insanity, accident other than an accident in a public place or murder at any time, *on or after the date on which the risk under the policy has commenced* but before the expiry of three years *from the date of this policy*, the Corporation's liability shall be limited to the sum equal to the total amount of premiums (exclusive extra of premiums, if any), paid under the policy without interest. Provided that in case the life assured shall commit suicide before the expiry of one year reckoned from the date of this policy, the provisions of the clause under the heading "Suicide" printed on the back of the policy".

(emphasis supplied)

17. The Court observed that Clause 4-B made it crystal clear that the date on which the risk under the policy commenced was different from the date of the policy. The Court took into consideration two expressions, viz., "the date on which the risk under the policy has commenced" and "the date of the policy". The Court held that since two expressions were used which obviously referred to two different periods, effect must be given to both of them. If the contention of the Insurance Company that the relevant date was the date on which the risk under the policy had commenced alone would be considered, the second expression ("the date of the policy") would become redundant. The Court noted the argument on behalf of the Insurance Company that the second date had a limited application for the purpose of giving certain tax relief but negated it. It was further observed by this Court that in construing contractual clauses, the words and terms therein must be given effect to and a part of the contract cannot be rendered meaningless while construing and interpreting the other part of the same contract. According to the Court, when the parties agree to the terms of the contract, it was not open to contend that a particular term was never intended to be acted upon. Accordingly, this Court held that on November 15, 1992, the policy was in existence and the respondent-claimant was entitled to the amount.

18. In the instant case, Condition 2 expressly provided the period during which the payment was to be made. It also in no uncertain terms stated that if premium was not paid before the expiry of grace period, the policy would lapse. In our view, the ratio in *Dharam Vir Anand* would support the Insurance Company rather than the complainant. If all the terms and conditions of the policy (contract between the parties) have to be kept in mind and given effect to, acceptance of argument on behalf of the complainant would make the last part of Condition 2 redundant, otiose and inoperative; and a court of law cannot construe a document in the manner suggested by the counsel for the complainant. As the premium was due on April 28, 1996 and was not paid till May 28, 1996, the policy lapsed. The For a below hence, committed

an error of law in allowing the complaint of the respondent herein and the orders are liable to be set aside.

19. For the reasons stated above, the appeal deserves to be allowed and is accordingly allowed. The orders passed by all the three Commissions are hereby set aside. The learned counsel for the appellant-Insurance Company, however, stated that the assured died in 1996 and the District Forum upheld the claim of the complainant in December, 2000. He fairly stated that the amount was not 'very high' and has also been paid and the Insurance Company was not so serious about the amount, but since the question of law had been wrongly decided, the Insurance Company had to approach this Court so that the law is settled. Therefore, though we hold the orders not to be in accordance with law and we set aside them, but we direct that no recovery will be effected from the respondent-complainant pursuant to this order.

20. The appeal is allowed to the extent indicated above. In the facts and circumstances of the case, however, there shall be no order as to costs.

MANU/SC/0635/1997

Equivalent Citation: AIR1997SC2459, [1997]89CompCas109(SC), (1997)2GLR1577, JT1997(4)SC505, RLW1997(2)SC189, 1997(3)SCALE423, (1997)5SCC64, [1997]3SCR617

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IN THE SUPREME COURT OF INDIA

Civil Appeals Nos. 7202-7203 of 1996

Decided On: 04.04.1997

Appellants: Harshad J. Shah and another

Vs.

Respondent: L.I.C. of India and others

Hon'ble

S. C. Agrawal and G. B. Pattanaik, JJ.

Judges/Coram:

Counsels:

For Appellant/Petitioner/Plaintiff: Naresh S. Mathur and Gopal Singh, Advs

For Respondents/Defendant: Harish N. Salve, K.K. Sharma, C.K. Sasi and Kailash Vasdev, Advs.

Subject: Contract

Catch Words

Mentioned IN

Acts/Rules/Orders:

Life Insurance Corporation Act, 1956 - Section 48(2); Indian Contract Act, 1872 - Section 186, Indian Contract Act, 1872 - Section 187, Indian Contract Act, 1872 - Section 188, Indian Contract Act, 1872 - Section 237; Constitution of India - Article 12, Constitution of India - Article 14; Life Insurance Corporation (Amendment) Act, 1981

Case Referred:

LIC of India v. Consumer Education & Research center MANU/SC/0772/1995

Prior History:

From the Judgment and Order dated 26-7-1994 of the National Consumer Disputes Redressal Commission, New Delhi in F.A. Nos. 280 and 323 of 1992--

Citing Reference:

Dissented

Case Note:

Contract - express prohibition - Section 237 of Indian Contract Act, 1872 and Life Insurance Corporation (Agents) Rules, 1981 - whether payment of premium in respect of life insurance policy by insured to general agent of Life Insurance Corporation of India (LIC) can be regarded as payment to insurer so as to constitute discharge of liability of insured - respondent No. 3 in receiving bearer cheque from insured not acting as agent of LIC - no express authority to receive premium on behalf of LIC given to respondent NO.3 because of existence of condition expressly prohibiting him from collecting premium on behalf of LIC in appointment letter - agents expressly prohibited from collecting any premium on behalf of LIC - LIC cannot be liable on basis of apparent authority under Section 237 - payment made to agent cannot be regarded as payment to insurer.

ORDER

S.C. Agrawal, J.

1. The question that falls for consideration in these appeals by special leave is whether payment of premium in respect of a life insurance policy by the insured to the general agent of the Life Insurance Corporation of India (for short 'LIC') can be regarded as payment to the insurer so as to constitute a discharge of liability of the insured. This question arises on the following facts :

Jaswantra G. Shah, the husband of appellant No. 2, (hereinafter referred to as 'the insured') took out four insurance policies for Rs. 25,000 each with double accidental benefits on March 6, 1986 through Shri Chaturbhuj H. Shah (respondent No. 3) who was a general agent of the LIC (respondent No. 1). Premium under the said policies was payable on half yearly basis. The insured deposited the first half yearly premium on March 6, 1986 and the second half yearly premium was deposited on September 6, 1986. The third half yearly premium fell due on March 6, 1987 but it was not deposited within the prescribed period. On June 4, 1987 respondent No. 3 met the insured and obtained from him a bearer cheque dated June 4, 1987 for Rs. 2,730 drawn on Union Bank of India, Malad, Bombay, towards the half yearly premium on all the four policies. The cheque was encashed by the son of respondent No. 3 on June 5, 1987. The said amount of premium was deposited by respondent No. 3 with the LIC on August 10, 1987. In the meanwhile on August 9, 1987 the insured met with a fatal accident and he died on the same day. Appellant No. 2, the widow of the insured, as the nominee under the policies, submitted a claim to the LIC on the basis of the said four policies but the claim was repudiated by the LIC on the ground that the policies had lapsed on account of non-

payment of the half yearly premium which fell due on March 6, 1987 within the period of grace. Appellant No. 2 along with the Consumer Education & Research Society (appellant No. 1), a Society registered under the societies. Registration Act and mainly devoted to the promotion and protection of consumer interest, submitted a complaint before the Gujarat State Consumer Disputes Redressal Commission at Ahmedabad wherein a claim was made for payment of Rs. 4,32,000 to appellant No. 2. The said claim comprised Rs. 1,00,000 payable under the four policies of Rs. 25,000 each, Rs. 1,00,000 payable towards double accidental benefit, Rs. 1,32,000 payable by way of interest @ 18% per annum on the aforementioned amount of Rs. 2,00,000 from June 6, 1987 to March 31, 1991 and Rs. 1,00,000 as compensation for annoyance, agony, hardship and humiliation caused to the dependents of the insured. The said complaint was transferred by the Gujarat State Consumer Disputes Redressal Commission to the Maharashtra State Consumer Disputes Redressal Commission at Bombay, (hereinafter referred to as 'the State Commission').

2. Before the State Commission the case of the appellants was that the amount of premium collected by respondent No. 3 from the insured was collected by him on behalf of the LIC. LIC, on the other hand, pleaded that the amount of premium collected by the General Agent cannot be said to have been received by the LIC. It was stated that the agents are not authorised to collect the premium amount. The State Commission, by its judgment dated June 5, 1992, directed the LIC to settle the claim in respect of the four policies within 30 days from the receipt of the order and to pay the amount of the claim to appellant No. 2 after deducting the amount of interest, if any, necessary to treat the policies as surviving. The State Commission held that in order to collect more business the agents of the LIC collect the premiums from the policyholders either in cash or by cheque and then deposit the money so collected in the office of the LIC and that this practice had been going on directly within the knowledge of the LIC administration despite the departmental instructions that the agents are not authorised to collect the premiums. The State Commission was of the view that when the practice of accepting money by the LIC Agent from policyholders is in existence and the money is collected by agent in his capacity and authority the reasonable inference was that the LIC was negligent in its service towards the policyholder.

3. Appeals were filed against the said judgment of the State Commission by the appellants as well as by respondent Nos. 1 and 2. The National Consumer Disputes Redressal Commission (hereinafter referred to as 'the National Commission') by its order dated July 26, 1994 has dismissed the appeals filed by the appellants and has allowed the appeal filed by the respondent Nos. 1 and 2. The National Commission has held that the insurance Agent in receiving a bearer cheque from the insured towards payment of the insurance premium was not acting as the Agent of the LIC nor could it be deemed that the LIC had received the premium on the date the bearer cheque towards the premium was received by the insurance Agent, namely, June 4, 1987 even though he deposited the same with the LIC on August 10, 1987, one day after the

death of the insured. Feeling aggrieved by the said decision of the National Commission, the appellants have filed these appeals.

4. It is not disputed that the third half yearly premium had become payable on the four insurance policies of the insured on March 6, 1987 and it was not paid within the grace period of one month prescribed in the insurance policies. In condition No. 2 of the conditions set out in the Insurance Policy it is stated that if the premium is not paid before the expiry of the days of grace, the Policy lapses. The case of the appellants is that since the payment was made to respondent No. 3 who was the agent of the LIC on June 4, 1987 by bearer cheque dated June 4, 1987 for Rs. 2,730, the policies did not lapse on account of non-payment of the premium within the period of grace and that in any event that said policies could be revived on payment of the interest payable for the delayed payment of the premium amount. The case of the LIC, on the other hand, is that respondent No. 3 had not been empowered by the LIC to receive payment from the insured on the policies and that handing over of the cheque of Rs. 2, 730 by the insured to respondent No. 3 on June 4, 1987 cannot be regarded as payment of premium by the insured to the LIC on June 4, 1987. The premium on the said policies was paid to the LIC only on August 10, 1987 but before that the insured had died on August 9, 1987 and, therefore, the policies, which had lapsed on account of non-payment of premium, could not be revived. The LIC, in this context, places reliance on the Life Insurance Corporation of India (Agents) Regulations, 1972 (hereinafter referred to as 'the Regulations') framed by the LIC, in exercise of the powers vested in it under Section 49 of the Life Insurance Corporation Act, 1956, (hereinafter referred to as 'the Act'). Regulation 8 dealt with functions of agents and Clauses (3) and (4) of the said Regulation provide as follows :

(3) Every agent shall, with a view to conserving the business already secured, maintain contract with all persons who have become policyholders of the Corporation through him and shall :

(a) advise every policyholders to effect nomination or assign merits in respect of his policy and offer necessary assistance in this behalf;

(b) endeavour to ensure that every installment of premium is remitted by the policyholder to the Corporation within the period of grace;

(c) endeavour to prevent the lapsing of a policy or its conversion into a paid-up policy; and

(d) render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid down in relation to settlement of claims.

(4) Nothing contained in these regulations shall be deemed to confer any authority on an agent to collect any money or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever :

Provided that an agent may be authorised by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified.

5. By the Life Insurance Corporation (Amendment) Act, 1981 (Act 1 of 1981), Clause (cc) was inserted in Sub-section (2) of Section 48 and as a result, rule-making power was conferred on the Central Government to make rules providing agents of the LIC including those who became employees and agents of the LIC on the appointed day under the Act and corresponding provision in Section 49 of the Act which empowered the LIC to make regulations in that regard was deleted. By virtue of Sub-section (2-A) of Section 48, which was also introduced by Act 1 of 1981, it was provided that the regulations and other provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981, with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the LIC on the appointed day under the Act, shall be deemed to be rules made under Clause (cc) of Sub-section (2) and shall, subject to the other provisions, have effect accordingly. In view of the said provisions, the Regulations by legal fiction introduced by Section 48(2A) of the Act became Life Insurance Corporation (Agents) Rules (hereinafter referred to as 'the Rules') with effect from January 31, 1981, the date of coming into force of Act 1 of 1981.

6. On behalf of the LIC it has also been stated that one of the conditions of appointment of respondent No. 3 as General Agent, as laid down in the letter of appointment dated December 5, 1962, was :

10. As a probationary agent you are not authorised to collect moneys, accept risks or bind the Corporation in any way other than to collect the Deposit towards the First Premium and Fees as stated in the booklet entitled "Hints to Agents", nor are you authorised or allowed to advance premium to the Corporation on behalf of policyholders or to become an assignee except with the prior permission in writing of the Divisional Manager, under policies on the lives of persons other than your own or your very near relatives such as wife or minor children, or major children if they are members of a joint family, or to get assigned to such very near relatives' policies on the lives of persons other than their near relatives. You are also not authorised to collect or pass receipts for moneys paid towards premiums, in respect of which remittances should be made to the Branch Office of the Corporation concerned and receipt in the Corporation's official form obtained. In respect of any unauthorised collections, you will be acting as an agent of the party concerned and not as an agent of the Corporation and you alone will be answerable to the party for consequences of such unauthorised actions.

7. On the basis of the aforesaid provisions contained in the Regulation/Rule 8 of the Regulations/Rules and Clause 10 of the conditions on which respondent No. 3 was appointed as the agent, the LIC claims that respondent No. 3 had not been authorised by the LIC to

collect the premium from the insured and the action of respondent No. 3 in receiving the cheque of Rs. 2,730 from the insured on June 4, 1987 cannot be regarded as receipt of premium by respondent No. 3 on behalf of the LIC and, therefore, the said payment cannot be treated as payment of premium to the LIC on June 4, 1987 and that insofar as the LIC is concerned the premium was paid only on August 10, 1987 after the death of the insured.

8. In condition No. 2 in the Insurance Policy it was provided that "if the premium is not paid before the expiry of the days of grace, the policy lapses". The grace period allowed for payment of yearly, half yearly or quarterly premiums was one month. The said grace period for payment of half yearly premium on the policies of the insured expired on April 6, 1987. Since the premium was admittedly not paid by the insured till April 6, 1987 the policies had lapsed. For revival of discontinued policies condition No. 3 of the Insurance Policy makes the following provision :

3. Revival of Discontinued Policies : If the Policy has lapsed, it may be revived during the life time to Life Assured, but within a period of 5 years from the date of the first unpaid premium and before the date of maturity, on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be fixed by the Corporation from time to time compounding half-yearly. The Corporation reserves the right to accept or decline the revival of discontinued policy. The revival of a discontinued policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the Life Assured.

9. In view of this condition the matter of revival of the policies of the insured could be considered only upon submission of proof of continued insurability to the satisfaction of the LIC and the payment of all the arrears of premium together with interest at such rate as may be fixed by the LIC. In other words the question of revival of the policies could arise only if the premium can be said to have been paid to the LIC during the life time of the insured, i.e., before August 9, 1987. Therefore, it becomes necessary to consider whether the half yearly premium was paid by the insured to the LIC on June 4, 1987 when the bearer cheque of Rs. 2,730 was delivered by the insured to respondent No. 3, as claimed by the appellants, or on August 10, 1987. when the said amount of Rs. 2,730 was deposited with the LIC, as claimed by the LIC. This raises the question whether receipt of the amount of Rs. 2,730 by cheque by respondent No. 3 can be regarded as receipt of the said amount by the LIC through its agent.

10. Shri Naresh S. Mathur, the learned Counsel appearing for the respondents, has submitted that in view of the fact that large number of policyholders are residing at places where there is no branch office of the LIC and the facility for depositing the premium with the LIC is not available within a reasonable distance it has been the prevailing practice in the LIC for the agents to collect the premium from the policyholders and to deposit the same at the LIC office later and since the agents receive commission on the amount of premium which they collect on

the policies the receipt of the premium by the agents must be treated as an act within the scope of their authority as agents of the LIC and the limitation imposed on the authority of the agents to receive the premium in the Regulations/Rules or in the letter of appointment cannot be binding as against third parties viz., the policyholders. The learned Counsel has, therefore urged that the payment of premium by the insured in the present case by bearer cheque on June 4, 1987 to respondent No. 3 should be treated to have been paid to respondent No. 3 in his capacity as the agent of the LIC.

11. Shri Harish Salve, the learned senior counsel appearing for the LIC, on the other hand, has submitted that in view of the Regulation/Rule 8 as well as Clause 10 in the letter of appointment of respondent No. 3 as agent it cannot be said that the LIC had conferred an authority on respondent No. 3 to collect the premium on behalf of the LIC and, therefore, the receipt of the cheque for Rs. 2,730 by respondent No. 3 from the insured on June 4, 1987 cannot be regarded as payment received by him on behalf of the LIC. The learned Counsel has, in support of the aforesaid submission, placed reliance on the law relating to agency governing the scope of authority of the agent.

12. Under the Law of Agency, as applicable in England, the authority of an agent may be : (i) actual or (ii) apparent.

13. Actual authority results from a manifestation of consent that he should represent or act for the principal made by the principal to the agent himself. It may be express if it is given wholly or in part by means of words or writing or it may be implied when it is regarded by the law as the principal having given him because of the interpretation put by the law on the relationship and dealings of the law two parties. Implied authority may arise in the form of incidental authority, i.e., authority to do whatever is necessarily or normally incidental to the activity expressly authorised, or usual authority, i.e., authority to do whatever an agent of the type concerned would usually have authority to do, or customary authority, i.e., authority to act in accordance with such applicable business customs as are reasonable. The authority of the agent may also be implied from the circumstances of the particular case.

14. The authority of the agent is apparent where it results from a manifestation made by the principal to third parties. The doctrine of apparent authority involves the assumption that there is in fact no authority at all. It is the authority of an agent as it appears to others. Under this doctrine where a principal represents, or is regarded by law as representing, that another has authority, he may be bound as against a third party by the acts of that other person within the authority which that person appears to have though he had not in fact given that person such authority or had limited the authority by instructions not made known to the third party. The notion of apparent authority is essentially confined to the relationship between principal and third party. (See : Bowstead on Agency, 15th Edn., Article 22, pages 92 to 94).

15. The position is not very different in the law in India. Section 186 of the Indian Contract Act, 1872 lays down that the authority of an agent may be express or implied. An authority is

said to be express when it is given by words spoken or written and an authority is said to be implied when it is to be inferred from the circumstances of the case and things spoken or written, of the ordinary course of dealing, may be accounted circumstances of the case (Section 187). Section 188 prescribes that an agent having as authority to do an act has authority to do every lawful thing which is necessary in order to do such act. In Section 237 it is provided that when an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

16. Under the law governing Contracts of Insurance the premium may be paid by the assured to the insurers or to an insurance agent acting on behalf of the insurers and if the agent has authority to receive it the payment binds the insurers. The authority need not be an express authority; it may be implied from the circumstances. (See : Halsbury's Laws of England, Vol. 25, p. 254 para 460).

17. In the instant case, it cannot be said that respondent No. 3 had the express authority to receive the premium on behalf of the LIC because in the letter of appointment dated December 5, 1962 there was a condition expressly prohibiting him from collecting the premium on behalf of the LIC. Nor can it be said that respondent No. 3 had an implied authority to collect the premium on behalf of the LIC because in 1972 the LIC has made a regulation (Regulation 8(4), which in 1981 became a rule, prohibiting the agents from collecting premium on behalf of the LIC. This shows that collection of premium was not necessary for or ordinarily incidental to the effective execution of his express authority by an agent. In view of this express prohibition in the Regulations/Rules which were published in the Gazette it is not possible to infer an implied authority by the LIC authorising its agents to collect premium on behalf of the LIC.

18. The only question is whether the LIC can be held liable on the basis of the doctrine of apparent authority. Shri Mathur has invoked the said doctrine and has relied upon Section 237 of the Indian Contract Act. He has urged that, by its conduct in receiving the premium through its agents, the LIC had induced the policyholders to believe that acts of the agents in receiving the premium from the policyholders were within the scope of the agents' authority. Shri Mathur has laid stress on the fact that respondent No. 3 was permitted to deposit the amount of Rs. 2,730 towards premiums with the LIC on August 10, 1987 on behalf of the insured. We, however, find that in the complaint that was filed on behalf of the appellants before the State Commission no such case was set up by the appellants that the LIC, by its conduct, had induced the policyholders, including the insured, to believe that the agents (including respondent No. 3) were authorised to receive the premium on behalf of the LIC. Nor is there any material on record which may lend support to the submission urged on behalf of the appellants that by its conduct the LIC had induced the policyholders, including the insured, to believe that agents were authorised to receive premium on behalf of the LIC. The only circumstance relied upon by the learned Counsel for the appellants is the receipt of the amount

of Rs. 2,730 by the LIC on August 10, 1987. In this regard, the submission of Shri Salve is that issuance of the receipt for the said amount of 2, 730 by the LIC in the name of the insured does not indicate that the amount was received through respondent No. 3 and that on the basis of the said receipt it cannot be said that the LIC had induced the insured to believe that respondent No. 3 was authorised to receive the amount of premium on behalf of the LIC. We find considerable merit in this submission. From the mere fact that respondent No. 3 had obtained bearer cheque for Rs. 2, 730 from the insured on June 4, 1987 and after encashing the same from the Bank on June 5 1987, had deposited the said amount with the LIC on August 10, 1987, it cannot be said that the LIC induced the insured to believe that respondent No. 3 had been authorised by the LIC to receive premium on behalf of the LIC. We are, therefore, unable to hold that the doctrine of apparent authority underlying Section 237 of the Indian Contract Act can be invoked in the facts of this case especially when the LIC has been careful in making an express provision in the Regulations/Rules, which are statutory in nature, indicating that the agents are not authorised to collect any moneys or accept any risk on behalf of the LIC and they can collect so only if they are expressly authorised to do so.

19. Shri Mathur has placed reliance on the observations of this Court in LIC of India and Anr. v. Consumer Education & Research center and Ors. MANU/SC/0772/1995 : AIR1995SC1811, wherein this Court has stressed that since the LIC is 'state' under Article 12 of the Constitution it has a duty to act fairly in view of the mandate contained in Article 14 of the Constitution. It is no doubt true that the LIC, being 'state' under Article 12 of the Constitution, must act within the confines of the rights guaranteed under Part III of the Constitution. But we are unable to appreciate as to how this constitutional obligation has bearing on the present case. In disclaiming its liability the LIC is acting in accordance with the provision in Regulations/Rules framed by it whereby the agents have been prohibited from collecting the moneys on behalf of the LIC. The said provision has been made in public interest in order to protect the Corporation from any fraud on the part of an agent. It cannot be said that in making such a provision in the Regulations/Rules and in acting in accordance with the same the LIC has not acted fairly or in consonance with its obligations under Part III of the Constitution.

20. For the reasons aforementioned, we are unable to uphold the claim of the appellants. No ground is made out for interfering with the decision of the National Commission that respondent No. 3 in receiving the bearer cheque for Rs. 2,370 from the insured was not acting as an agent of the LIC. But keeping in view the facts and circumstances of the case we direct the LIC to refund the entire amount of premium paid to the LIC on the four insurance policies to appellant No. 2 along with interest @ 15% per annum. The interest will be payable from the date of receipt of the amounts of premium. We are also of the opinion that having regard to the fact that the appellants had succeeded before the State Commission and the questions raised by them are of sufficient importance requiring a decision by this Court respondents No. 1 shall pay to appellants a sum of Rs. 10,000 (Rupees ten thousand only) as costs. The amount of premiums with interest and the costs shall be paid within a period of one month. The appeals

are disposed of accordingly.

MANU/SC/0255/1962

Equivalent Citation: AIR1962SC814, [1962]32CompCas177(SC), [1962]Supp2SCR571

Add 

IN THE SUPREME COURT OF INDIA

Decided On: 15.01.1962

Appellants: Mithoolal Nayak

Vs.

Respondent: Life Insurance Corporation of India

Hon'ble

Judges/Coram:

K. Subba Rao, Raghubar Dayal and S. K. Das, JJ.

Subject: Media and Communication

Subject: Insurance

Catch Words

Mentioned IN

Acts/Rules/Orders:

life Insurance Corporation Act, 1956 ;Insurance Act, 1938 - Section 38, Insurance Act, 1938 - Section 45; Indian Contract Act, 1872 - Section 17, Indian Contract Act, 1872 - Section 19, Indian Contract Act, 1872 - Section 30, Indian Contract Act, 1872 - Section 64, Indian Contract Act, 1872 - Section 65; Constitution of India - Article 133(1)

Case

Note:

The case questioned whether repudiation of the life policy by the company after two years, was proper, when the said policy was obtained by deliberate mis-statement and fraudulent suppression It further questioned whether the appellant was liable to get the refund of the money paid as premium The Court ruled that the policy holder was guilty of fraudulent suppression of material facts and the company was entitled to avoid the contract under Section 45 of the Insurance Act, 1938 Moreover, the appellant was not entitled to a refund of the money paid as premium.

JUDGMENT

S.K. Das, J.

1. This is an appeal on a certificate granted by the High Court of Madhya Pradesh under Art. 133(1)(a) of the Constitution. The appellant is Mithoolal Nayak, who took an assignment on October 18, 1945 of a life insurance policy on the life of one Mahajan Deolal for a sum of Rs. 25,000/- in circumstances which we shall presently state. Mahajan Deolal died on November 12, 1946. Thereafter, the appellant made a demand against the respondent company for a sum of Rs. 26,000/- and odd on the basis of the life insurance policy which had been assigned to him. This claim or demand of the appellant was repudiated by the respondent company by a letter dated October 10, 1947, which in substance stated that the insured Mahajan Deolal had been guilty of deliberate mis-statements and fraudulent suppression of material information in answers to questions in the proposal form and the personal statement, which formed the basis of the contract between the insurer and the insured. On the repudiation of his claim the appellant brought the suit out of which this appeal has arisen. The suit was originally instituted against the Oriental Government Security Life Assurance Co. Ltd., Bombay, which issued the policy in favour of Mahajan Deolal on March 13, 1945. Latter, on the passing of the Life Insurance Corporation Act, 1956, there was a statutory transfer of the assets and liabilities of the controlled (life) business of all insurance companies and insurers operating in India to a Corporation known as the Life Insurance Corporation of India. By an order of this Court made on February 16, 1960, the said Corporation was substituted in place of the original respondent. For brevity and convenience we shall ignore the distinction between the original respondent and the said Corporation and refer to the respondent in this judgment as the respondent company. The Suit was decreed by the learned Additional District Judge of Jabalpur by his judgment dated May 7, 1949. The respondent company then preferred an appeal to the High Court of Madhya Pradesh. This appeal was heard by a Division Bench of the said High Court and by a judgment dated August 28, 1956, the appeal was allowed and the suit was dismissed with costs. It is from that appellate judgment and decree that the present appeal has been brought to this Court.

2. We now proceed to state some of the relevant facts relating to the appeal and the contentions urged on behalf of the appellant. Mahajan Deolal was a resident of village Singhpur, Tehsil Narsinghpur. It appears that he was a small landholder and possessed several acres of land. Sometime in December, 1942, Mahajan Deolal submitted a proposal through one Rahatullah Khan, an agent of the respondent company at Narsinghpur, for the insurance of his life with the respondent company for a sum of Rs. 10,000/- only. Mahajan Deolals age at that time was about 45 as stated by him. In the proposal form which was submitted to the respondent company, Mahajan Deolal mentioned the name of one Motial Nayak, by profession a doctor, as a personal friend who best knew the state of the health and habits etc. of the insured. This Motial Nayak, be it noted, is a brother of the appellant, the evidence in the record showing that the two brothers lived together in the same house. When the proposal for insurance of his life was made by Mahajan Deolal in December 1942, he was examined by

a doctor named Dr. D. D. Desai. This doctor submitted two reports about Mahajan Deolal; one report, it appears, was submitted with the proposal form through the agent of the respondent company; another report was sent in a confidential cover along with a letter from the doctor. In this letter (Ex. D-22) the doctor explained why he was submitting two medical reports. In substance he said that the report submitted with the proposal form at the instance of the agent, Rahatullah Khan, was not a correct report and the correct report was the one which he enclosed in the confidential cover. In that report Dr. Desai said that Mahajan Deolal was anaemic, looked about 55 years old, had a dilated heart and his right lung showed indications of an old attack of pneumonia or pleurisy. The doctor further said that the general health of Mahajan Deolal was very much run down and he was a total physical wreck. The doctor opined that Mahajan Deolal's life was an uninsurable life. It appears that nothing came out of the proposal made by Mahajan Deolal for the insurance of his life in December, 1942. The evidence of the Inspector of the respondent company shows that on receipt of Dr. Desai's reports, the respondent company directed that Mahajan Deolal should be further examined by the Civil Surgeon, Hoshangabad and District Medical Officer, Railways at Jabalpur. Mahajan Deolal could not, however, be examined by the two doctors aforesaid and according to the rules of the respondent company the proposal lapsed on the expiry of six months for want of completion of the medical examination as required by the respondent company. Then, on July 16, 1944, a second proposal was made through the same agent of the respondent company for the insurance of the life of Mahajan Deolal, this time for a sum of Rs. 25,000/-. The Inspector of the respondent company said in his evidence that this second proposal was made at the instance of the same agent, Rahatullah Khan, inasmuch as the proposal of 1942 had not been rejected but had only lapsed. It appears that at the time of the first proposal in 1942 Mahajan Deolal had paid a sum of Rs. 571/- and odd towards the first premium due in case the proposal was accepted. In the personal statement accompanying the second proposal of July 16, 1944, it was stated that an earlier proposal for insuring the life of Mahajan Deolal was pending with the respondent company. Now, in the proposal form (Ex. D-11) there was a question (question no. 13) to the following effect :

"Have you within the past five years consulted any medical man for any ailment not necessarily confining you to your house ? If so, give details and state names and addresses of medical man consulted."

3. The answer given to the question was - "No". This answer, according to the case of the respondent, was false and deliberately false, because, according to the evidence of one Dr. P. N. Lakshmanan, Consulting Physician at Jabalpur, Mahajan Deolal was examined and treated by the said doctor between the dates September 7, 1943, and October 6, 1943, when the doctor found that Mahajan Deolal was suffering from anaemia, oedema of the feet, diarrhoea and panting on exertion. We shall advert in greater detail to the evidence of Dr. Lakshmanan at a later stage. In his personal statement accompanying the second proposal Mahajan Deolal answered in the negative question 12(b), the question being as to when he was last under

medical treatment and for what ailment and how long. In the same personal statement with regard to questions, for example, question nos. 5(a); 5(b) etc., as to whether he suffered from shortness of breath, anaemia, asthma etc., Mahajan Deolal gave negative answers. The contention on behalf of the respondent company was that these answers in the personal statement were also deliberately false and constituted a fraudulent suppression of material particulars relating to the health of the insured. With regard to the second proposal and the personal statement accompanying it, Dr. Motilal Nayak, brother of the appellant, gave a friend's report, in which he said that Mahajan Deolal's health was good and that he had never heard that Mahajan Deolal suffered from any illness. It is worthy of note here that Dr. Motilal Nayak himself took Mahajan Deolal to Dr. Lakshmanan for treatment at Jabalpur in September-October, 1943. On receipt of the second proposal in July, 1944, Mahajan Deolal was examined by Dr. Kapadia, who was the District Medical Officer of the Railways at Jabalpur. Dr. Kapadia reported that Mahajan Deolal was a healthy man and looked about 52 to 54 years old. He recommended that Mahajan Deolal might be given a policy of fourteen years. In his report Dr. Kapadia noted that Mahajan Deolal had stated that he had suffered from pneumonia four or five years ago, and that he had also cholera some years ago. No mention, however, was made of anaemia, asthma, shortness of breath etc. On December 29, 1944, Mahajan Deolal made a further declaration of his good health and so also on February 12, 1945. On March 13, 1945, the policy was issued by the respondent company. It contained the usual terms of such life insurance policies, one of which was that in case it would appear that any untrue or incorrect averment had been made in the proposal form or personal statement, the policy would be void. The first premium due on the policy was taken from the amount which was already in deposit with the respondent company in connection with the proposal made in 1942. Then, on May 22, 1945, Mahajan Deolal wrote a letter to the respondent company in which he said that his financial condition has become suddenly worse and that he would not be able to pay the premium for the policy. He requested that the policy be cancelled. In the meantime the premium for 1945 not having been paid, the policy lapsed. Then, on October 28, 1945, Mahajan Deolal made a request for revival of the policy, but a few days before that, namely on October 18, 1945, the policy was assigned in favour of the appellant, by an endorsement made on the policy itself. This assignment was duly registered by the respondent company by means of its letter dated November 1, 1945 in which the respondent company said that it accepted the assignment without expressing any opinion as to its validity or effect. The respondent company also made an enquiry from the appellant as to whether the latter had any insurable interest in the life of the insured and what consideration had passed from him to the insured. To this the appellant replied that he had no insurable interest in the life of Mahajan Deolal except that the latter was friend and he (the appellant) had purchased the policy for a sum of Rs. 427.12 nP. being the premium paid by him so far, because Mahajan Deolal did not wish to continue the policy. On his request for a revival of the policy Mahajan Deolal was again medically examined, this time by one Dr. Belapurkar. Later on February 25, 1946, he was examined by Dr. Clarke. The policy was then revived on

payment of all arrears of premium, these arrears having been paid by the present appellant. On receipt of the revival fee, the policy appears to have been revived some time in July, 1946. We have already stated that Mahajan Deolal died in November, 1946. The certificate of Dr. Clarke, who was the medical attendant at the time when Mahajan Deolal died, showed that the primary cause of death of Mahajan Deolal was malaria followed by severe type of diarrhoea; the secondary cause was anaemia, chronic bronchitis and enlargement of liver. In the certificate which Dr. Clarke gave there was mention of certain other medical practitioners who had attended Mahajan Deolal at the time of his death. One of such medical practitioners mentioned in the certificate was Dr. Lakshmanan. On receipt of this certificate the respondent company got into touch with Dr. Lakshmanan and discovered from him that Mahajan Deolal had been treated in September-October, 1943, by Dr. Lakshmanan for ailments which, according to the doctor, were of a serious nature.

4. Several issues were tried between the parties in the trial court. But the four questions which were argued in the High Court and on which the fate of the appeal depends were these :-

(1) Whether the policy was vitiated by fraudulent suppression of material facts by Mahajan Deolal ?

(2) Whether the present appellant had no insurable interest in the life of the insured, and if so, can he sue on the policy ?

(3) Whether the respondent company had issued the policy with full knowledge of the facts relating to the health of the insured and if so, is it estopped from contesting the validity of the policy ? and

(4) Whether in any event the appellant is entitled to refund of the money he had paid to the respondent company ?

These are the four questions which have been agitated before us and we shall deal with such of them as are necessary for deciding this appeal.

5. So far as the first question is concerned, the learned trial Judge found that though Mahajan Deolal had given a negative answer to question no. 13 in the proposal form and to questions nos. 5(a), 5(b), 5(f) and 12(b) in the personal statement, these answers though not strictly accurate, furnished no grounds for repudiating the claim of the appellant by the respondent company, in as much as s. 45 of the Insurance Act, 1938 (4 of 1938) applied and the answers did not amount to a fraudulent suppression of material facts by the policy-holder within the meaning of that section. The learned trial Judge found that the ailments for which Dr. Lakshmanan treated Mahajan Deolal in September-October, 1943, were of a casual or trivial nature and the failure of the policy-holder to disclose those ailments did not attract the second part of s. 45 of the Insurance Act. The High Court came to a contrary conclusion and held that even applying s. 45 of the Insurance Act, the policy-holder was guilty of a fraudulent

suppression of material facts relating to his health within the meaning of that section and the respondent company was entitled to avoid the contract on that ground.

6. On behalf of the appellant it has been argued before us that the finding of the learned trial Judge on this question was the correct finding and that the High Court was wrong in arriving at a contrary finding on this question in view of the evidence given in the case. The judgment of the High Court is a judgment in reversal and the appellant has a right of appeal under Art. 133(1)(a) of the Constitution in as much as the value of the subject matter of the dispute in the court of first instance and still in dispute is more than Rs. 20,000/-. We have, therefore, allowed learned counsel for the parties to take us through the evidence in the case. On a consideration of that evidence we have come to the conclusion that the finding of the High Court is the correct finding.

7. We shall presently consider the evidence, but it may be advantageous to read first s. 45 of the Insurance Act, 1938, as it stood at the relevant time. The section, so far as it is relevant for our purpose, is in these terms :

"No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

X X X X X X"

8. It would be noticed that the operating part of s. 45 states in effect (so far as is relevant for our purpose) that no policy of life insurance effected after the coming into force of the Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false; the second part of the section is in the nature of a proviso which creates an exception. It says in effect that if the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose, then the insurer can call in question the policy effected as a result of

such inaccurate or false statement. In the case before us the policy was issued on March 13, 1945, and it was to come into effect from January 15, 1945. The amount insured was payable after January 15, 1968, or at the death of the insured, if earlier. The respondent company repudiated the claim by its letter dated October 10, 1947. Obviously, therefore, two years had expired from the date on which the policy was effected. We are clearly of the opinion that s. 45 of the Insurance Act applies in the present case in view of the clear terms in which the section is worded, though learned counsel for the respondent company sought, at one stage, to argue that the revival of the policy some time in July, 1946, constituted in law a new contract between the parties and if two years were to be counted from July, 1946, then the period of two years had not expired from the date of the revival. Whether the revival of a lapsed policy constitutes a new contract or not for other purposes, it is clear from the wording of the operative part of s. 45 that the period of two years for the purpose of the section has to be calculated from the date on which the policy was originally effected; in the present case this can only mean the date on which the policy (Ex. P-2) was effected. From that date a period of two years had clearly expired when the respondent company repudiated the claim. As we think that s. 45 of the Insurance Act applies in the present case, we are relieved of the task of examining the legal position that would follow as a result of inaccurate statements made by the insured in the proposal form or the personal statement etc. in a case where s. 45 does not apply and where the averments made in the proposal form and in the personal statement are made the basis of the contract.

9. The three conditions for the application of the second part of s. 45 are -

- (a) the statement must be on a material matter or must suppress facts which it was material to disclose;
- (b) the suppression must be fraudulently made by the policy-holder; and
- (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

10. The crucial question before us is whether these three conditions were fulfilled in the present case. We think that they were. We are unable to agree with the learned trial Judge that the ailments for which Mahajan Deolal was treated by Dr. Lakshmanan in September-October, 1943, were trivial or casual ailments. Nor do we think that Mahajan Deolal was likely to forget in July, 1944, that he had been treated by Dr. Lakshmanan for certain serious ailments only a few months before that date. This brings us to a consideration of the evidence of Dr. Lakshmanan. That evidence is clear and unequivocal. Dr. Lakshmanan says that Dr. Motilal Nayak brought the patient to him at Jabalpur. We have already referred to the fact that Dr. Motilal Nayak had himself made a false statement in his friend's report dated July 17, 1944, when he said that he had never heard that the insured had suffered from any illness. It is impossible to believe that Dr. Motilal Nayak would not remember that he had himself taken

the insured to Jabalpur for treatment by Dr. Lakshmanan who was an experienced consulting physician. Dr. Lakshmanan said that when he first examined Mahajan Deolal on September 7, 1943, he found that his condition was serious as a result of the impoverished condition of his blood, and that Mahajan Deolal was suffering from anaemia, oedema of the feet, diarrhoea and panting on exertion. The doctor asked for an examination of the blood. The pathological report supported the diagnosis that Mahajan Deolal was suffering from secondary anaemia meaning thereby that anaemia was due to lack of iron and malnutrition. Dr. Lakshmanan further found that from the symptoms disclosed the disease was a major one. Mahajan Deolal had also cardiac asthma which was a symptom of anaemia and due to dilatation of heart. Dr. Lakshmanan saw the patient again on September 9, 1943, and then again on September 16, 1943. On October 6, 1943 Mahajan Deolal himself went to Dr. Lakshmanan. On that date Dr. Lakshmanan found that anaemia had very greatly disappeared. In cross-examination Dr. Lakshmanan admitted that the anaemia, dilatation of heart and cardiac asthma from which Mahajan Deolal was suffering constituted a passing phase which might disappear by treatment. He further admitted that he did not mention cardiac asthma in his letter addressed to the respondent company. We have given our very earnest consideration to the evidence of Dr. Lakshmanan and we are unable to hold that the ailments from which Mahajan Deolal was then suffering were either trivial or casual in nature. The ailments were serious though amenable to treatment Mahajan Deolal's son gave evidence in the case and he said in his evidence that though Dr. Lakshmanan prescribed some medicine, his father did not take it. He further said that his father was a strict vegetarian. This evidence was given by the son with regard to what the doctor had said that he prescribed fresh liver juice made at home according to his directions three times a day. He also prescribed iron sulphate in tablet form with plenty of water. The son further said that during his stay at Jabalpur his father felt weakness, though he used to move about freely and was never confined to bed. The son tried to make it appear in his evidence that his father was suffering from nothing serious. Dr. Lakshmanan said in his evidence that his fees for visiting a patient at Jabalpur were Rs. 16/- per visit. We agree with the High Court that if Mahajan Deolal was not suffering from any serious ailment, he would not have been taken by his physician, Dr. Motilal Nayak from his village to Jabalpur nor would he have consulted Dr. Lakshmanan, a consulting physician of repute, for so many days on payment of Rs. 16/- per visit. No doubt, Mahajan Deolal's son now tries to make light of the illness of his father but Dr. Lakshmanan's evidence shows clearly enough that in September-October, 1943. Mahajan Deolal was suffering from a serious type of anaemia for which he was treated by Dr. Lakshmanan. Mahajan Deolal could not have forgotten in July, 1944, that he was so treated only a few months earlier and furthermore, Mahajan Deolal must have known that it was material to disclose this fact to the respondent company. In his answers to the questions put to him he not only failed to disclose what it was material for him to disclose, but he made a false statement to the effect that he had not been treated by any doctor for any such serious ailment as anaemia or shortness of breath or asthma. In other words, there was a deliberate suppression fraudulently made by Mahajan Deolal. Fraud,

according to s. 17 of the Indian Contract Act, 1872 (IX of 1872), means and includes Inter alia any of the following acts committed by a party to a contract with intent to deceive another party or to induce him to enter into a contract -

(1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true; and

(2) the active concealment of a fact by one having knowledge or belief of the fact. Judged by the standard laid down in s. 17, Mahajan Deolal was clearly guilty of a fraudulent suppression of material facts when he made his statements on July 16, 1944, statements which he must have known were deliberately false. Therefore, we are in agreement with the High Court in answering the first question against the appellant.

12. We may here dispose of the third question Learned counsel for the appellant has argued before us that Mahajan Deolal was examined under the direction of the respondent company by as many as four doctors, namely, Dr. Desai, Dr. Kapadia, Dr. Belapurkar and Dr. Clarke. It is further pointed out that Mahajan Deolal had correctly disclosed that he had suffered previously from malaria, pneumonia and cholera. Dr. Kapadia, it is point out, was specifically asked to examine Mahajan Deolal in view of the conflicting reports which Dr. Desai had earlier submitted. On these facts, the argument has been that the respondent company had full knowledge of all facts relevant to the state of health of Mahajan Deolal and having knowledge of the full facts, it was not open to the respondent company to call the policy in question on the basis of the answers given by Mahajan Deolal in the proposal form and the personal statement, even though those answers were inaccurate. Learned counsel for the appellant has referred us to the Explanation to s. 19 of the Indian Contract Act in support of his argument. We are unable to accept this argument as correct. It is indeed true that Mahajan Deolal was examined by as many as four doctors. It is also true that the respondent company had before it the conflicting reports of Dr. Desai and it specially asked Dr. Kapadia to examine Mahajan Deolal in view of the reports submitted by Dr. Desai. Yet, it must be pointed out that the respondent company had no means of knowing that Mahajan Deolal had been treated for the serious ailment of secondary anaemia followed by dilatation of heart etc. in September-October, 1943 by Dr. Lakshmanan. Nor can it be said that if the respondent company had knowledge of those facts, they would not have made any difference. The principle underlying the Explanation to s. 19 of the Contract Act is that a false representation, whether fraudulent or innocent is irrelevant if it has not induced the party to whom it is made to act upon it by entering into a contract. We do not think that that principle applies in the present case. The terms of the policy make it clear that the averments made as to the state of health of the insured in the proposal form and the personal statement were the basis of the contract between the parties, and the circumstance that Mahajan Deolal had taken pains to falsify or conceal that he had been treated for a serious ailment by Dr. Lakshmanan only a few months before the policy was taken shows that the falsification or concealment had an important bearing in

obtaining the other party's consent. A man who has so acted cannot afterwards turn round and say : "It could have made no difference if you had known the truth." In our opinion, no question of waiver arises in the circumstances of this case, nor can the appellant take advantage of the Explanation to s. 19 of the Indian Contract Act.

13. Our finding on the first question makes it unnecessary for us to decide the second question, namely, whether the present appellant merely gambled on the life of Mahajan Deolal when he took the assignment on October 18, 1945. The contention of the respondent company was that appellant had no insurable interest in the life of Mahajan Deolal and when he took the assignment of the policy on October 18, 1945 he was merely indulging in a gamble on Mahajan Deolal's life; the contract was therefore, void by reason of s. 30 of the Indian Contract Act. On behalf of the appellant, however, the contention was that s. 38 of the insurance Act provided a complete code for assignment and transfer of insurance policies and the assignment made in favour of the appellant by Mahajan Deolal was a valid assignment in accordance with the provisions of s. 38 aforesaid. The High Court, it appears, proceeded on the footing that from the very inception the policy was taken for the benefit of the appellant on the basis of a gamble on the life of Mahajan Deolal; it said that the appellant and his brother, Dr. Motilal Nayak, knew very well that Mahajan Deolal was not likely to live very long and when the policy was taken out in 1944, it was really for the benefit of the present appellant, who soon after took an assignment on payment of the premium already paid by Mahajan Deolal and such arrears of premium as were then outstanding. It is unnecessary for us to give our decision on these contentions; because if Mahajan Deolal was himself guilty of a fraudulent suppression of material facts on which the respondent company was discharged from performing its part of the contract, the appellant who holds an assignment of the policy cannot stand on a better footing than Mahajan Deolal himself. It was argued before us that if the policy was valid in its inception, that is to say, if it was in fact effected for the use and benefit of Mahajan Deolal, who undoubtedly had an insurable interest in his own life, it could not afterwards be invalidated by assignment to a person who had no interest but who merely took it as a speculation. Our attention was drawn to several decisions on this question, American and English, noticed in para 502 of MacGillivray on Insurance law (fourth Edition). We consider it unnecessary to examine those decisions or to go into the question posed therein. That question must be left to be determined in a case where it properly arises. As we have stated earlier, on our conclusion on the first question, the appellant is clearly out of Court and can not claim the benefit of a contract which had been entered into as a result of a fraudulent suppression of material facts by Mahajan Deolal.

14. This brings us to the last question, namely, whether the appellant is entitled to a refund of the money he had paid to the respondent company. Here again one of the terms of the policy was that all moneys that had been paid in consequence of the policy would belong to the company if the policy was vitiated by reason of a fraudulent suppression of material facts by the insured. We agree with the High Court that where the contract is bad on the ground of

fraud, the party who has been guilty of fraud or a person who claims under him cannot asked for a refund of the money paid. It is a well-established principal that courts will not entertain an action for money had and received, where, in order to succeed, the plaintiff has to prove his own fraud. We are further in agreement with the High Court that in cases in which there is stipulation that by reason of a breach of warranty by one of the parties to the contract, the other party shall be discharged from the performance of his part of the contract, neither s. 65 nor s. 64 of the Indian Contract Act has any application.

15. For the reasons given above we have come to the conclusion that there is no merit in the appeal. The appeal is accordingly dismissed with costs.

16. Appeal dismissed.

MANU/SC/8115/2007

Equivalent Citation: 2008ACJ456, AIR2008SC424, 2008(1)ALD30(SC), 2008(1)ALLMR(SC)408, 1(2008)CLT859, III(2008)CPJ78(SC), 2008(1)CTC152, 2008(1)KLT698(SC), 2008-2-LW528, (2008)1MLJ1256(SC), (2008)149PLR257, 2007(13)SCALE329, (2008)1SCC321, [2007]12SCR352 **Add** 

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 5322 of 2007 (Arising out of SLP (C) No. 23951 of 2005)

Decided On: 20.11.2007

Appellants: **P.C. Chacko and Anr.**

Vs.

Respondent: **Chairman, Life Insurance Corporation of India and Ors.**

Hon'ble

S. B. Sinha and H. S. Bedi, JJ.

Judges/Coram:

Counsels:

For Appellant/Petitioner/Plaintiff: R. Sathish, Adv

For Respondents/Defendant: Paramjit Singh Patwalia, Sr. Adv. and S. Rajappa, Adv.

Subject: Insurance

Catch Words

Mentioned IN

Acts/Rules/Orders:

Insurance Act, 1938 - Section 45; Constitution of India - Article 12

Cases

Referred:

All India General Insurance Co. Ltd. and Anr. v. S.P. Maheshwari MANU/TN/0203/1960; Mithoolal Nayak v. Life Insurance Corporation of India MANU/SC/0255/1962; Life Insurance Corporation of India and Ors. v. Asha Goel (Smt) and Anr. MANU/SC/0804/2000; Allianz Und Stuttgarter Life Insurance Bank Ltd. v. Hemanta Kumar Das MANU/WB/0096/1938; Ratan Lal and Anr. v. Metropolitan Insurance Co. Ltd. MANU/BH/0116/1959

Prior

History:

From the final Judgment and Order dated 17.12.2004 of the High Court of Kerala at Ernakulam in A.F.A. No. 18 of 2000

Disposition:

Appeal dismissed

Citing

Reference:

Discussed

3

Mentioned

2

Case

Note:

(1) Insurance Act, 1938 - Section 45—Repudiation of policy—Insured took policy on 21.2.1987 and died in 1987 on account of 'polyneuritis'—Respondent repudiated policy on 10.2.1989 on premise that insured suppressed material facts—Insured gave incorrect answers about his health and operation for 'Adenoma Thyroid' undergone by him—Whether policy rightly repudiated in terms of Section 45 within two years?—Held, "yes"—No interference called for.

(2) Constitution of India - Article 12—Insurance Act, 1938—Section 45—Repudiation of policy—L.I.C. is State within meaning of Article 12—No case that contract of insurance or clause thereof—Is unreasonable, unfair or irrational—Also not case of appellants that in framing questionnaire in application/proposal form—Respondents acted unjustifiably or conditions imposed unconstitutional

Ratio

Decidendi:

"Non-disclosure and misstatement of material facts - The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material must be disclosed otherwise there is good ground for rescission of the contract. "

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Application of Section 45 of the Insurance Act, 1938 is in question in this appeal which arises out of a judgment and order dated 17th December, 2004 passed by a Division Bench of the High Court of Kerala at Ernakulam in A.F.A. No. 18 of 2000 setting aside the judgment and order of a learned Single Judge dated 23rd September, 2000 passed in Appeal Suit No.633 of 1993 confirming the judgment and decree passed by the Subordinate Judge of Kozhikode in

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OS No. 240 of 1990 dated 27th February, 1993.

3. Plaintiffs in the suit are the appellants herein. They filed the said suit inter alia for recovery of the amount of insurance on the death of one Chackochan (hereinafter referred to as 'the insured'). The insured took an insurance policy on 21st February, 1987. He died on 6th July, 1987. On his death, the appellants herein claimed the insured amount. On the premise that the insured suppressed material facts, the policy had been repudiated by the respondent on 10th February, 1989. Non-disclosure and mis-statement in the proposal form to the various questions to which answers were given by the insured is said to be the reason for the aforementioned repudiation of the contract of insurance.

4. It now stands admitted that the insured had undergone an operation for Adenoma Thyroid. The particulars furnished by him while filling up the application form for obtaining the said policy were as under:

(a) Did you ever have any operation, accident or injury? The answer was "No." (b) Have you remained absent from place of your work on ground of health during the last 5 years ? To which answer was "No." (c) What has been your state of health? The answer was "good."

The fact that the said answers were incorrect is not in dispute. The suit filed by the appellants, however, was decreed.

5. On an appeal preferred by the respondents, on the premise that despite such wrong answers, as the injured died on account of "polyneuritis", a learned Single Judge of the High Court opined that there was nothing to indicate that if the injured had disclosed the factum of previous operation, the appellant-Corporation might not have inclined to insure and insisted on a higher premium and thus there was no material to show that the non-disclosure was of a material fact justifying repudiation of the policy by the Corporation.

6. On an intra court appeal, the Division Bench of the High Court, however, by reason of the impugned judgment opined that the parties are bound by the warranty clause contained in the agreement which is also clear from the declaration signed by the insured and the non-disclosure related to a material fact which was required to be answered correctly under question No.22(a).

7. Mr. R. Sathish, learned Counsel appearing on behalf of the appellants would submit that a clear finding of fact having been arrived at by the trial court that despite undergoing Adenoma Thyroid operation four years prior to the date of proposal of policy, the cause of insured's death being "polyneuritis" which had no connection with the operation and the judgment of the trial court having been affirmed by the learned Single Judge, should not have been interfered with by the Division Bench. Our attention was further drawn to the fact that the medical officer had noted a black mole on lower aspect of left side of neck and from Ext. A1 wherefrom it appeared that there had been no past history suggestive of allergies, injuries, operations, diseases like rheumatic fever, syphilis etc. and the deceased having no other complaint due to

operation, the impugned judgment cannot be sustained.

8. Life Insurance policy, it was submitted is a requirement of social security. In that view of the matter, a suppression could not have been led to repudiation of policy, particularly when the doctor who examined the insured was appointed by the respondent-Corporation itself. Our attention in this behalf has been drawn to the decision of the Madras High Court in *All India General Insurance Co. Ltd. and Anr. v. MANU/TN/0203/1960 : S.P. Maheshwari AIR1960Mad484* for the proposition that there exists a distinction between a 'representation' and a 'warranty'.

9. Mr. Patwalia, learned Senior Counsel, appearing on behalf of the respondents, on the other hand, submitted that having regard to the provisions contained in Section 45 of the Insurance Act and the policy having been repudiated within a period of 2 years, the impugned judgment should not be interfered with. It was submitted that undergoing of an operation having a direct nexus with the health of the insured, suppression thereof has rightly been considered with all seriousness by the Corporation. It was argued that the operation underwent by the insured being a major one, was a material fact which ought to have been disclosed. Not only the insured had given wrong answers to the questions, his brother himself being a Life Insurance Corporation's agent and furthermore in view of the fact that a declaration was given by the insured that no untrue averment was made therein, the contract of insurance was null and void and all monies which had been paid in respect thereof would stand forfeited to the Corporation. Learned Counsel for the Corporation has placed strong reliance on *Mithoolal Nayak v. MANU/SC/0255/1962 : Life Insurance Corporation of India AIR1962SC814*.

10. The basic fact of the matter is not in dispute. The insured had undergone an operation for Adenoma Thyroid. It was a major operation. Although the said operation was undergone by him four years prior to the date of the proposal made by him, he did not disclose thereabout prior to obtaining the insurance policy. We may notice that he died within six months from the date of taking of the policy i.e. on 6th July, 1987, policy having taken on 21st February, 1987.

11. Section 45 of the Insurance Act reads as under:

45. - Policy not to be called in question on ground of mis-statement after two years, -

No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of

making it that the statement was false or that it suppressed facts which it was material to disclose:

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

12. Section 45 postulates repudiation of such policy within a period of two years. By reason of the aforementioned provision, a period of limitation of two years had, thus, been specified and on the expiry thereof the policy was not capable of being called in question, inter alia on the ground that certain facts have been suppressed which were material to disclose or that it was fraudulently been made by the policy holder or that the policy holder knew at the time of making it that the statement was false. Statute, therefore, itself provides for the limitation for valid repudiation of an insurance policy. It takes into account the social security aspect of the matter

13. There are three conditions for application of second part of Section 45 of the Insurance Act which are:

(a) the statement must be on a material matter or must suppress facts which it was material to disclose;

(b) the suppression must be fraudulently made by the policy-holder; and

(c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

[See Mithoolal Nayak (supra)]

14. The insured's brother was an agent of the Life Corporation of India. It was he, who had asked the insured to take the insurance policy. He, being an authorized agent of the Life Insurance Corporation, presumably knew the effect of misstatement of facts. Misstatement by itself, however, was not material for repudiation of the policy unless the same is material in nature.

15. The insured furthermore was aware of the consequence of making a misstatement of fact. If a person makes a wrong statement with knowledge of consequence therefor, he would ordinarily be estopped from pleading that even if such a fact had been disclosed, it would not have made any material change.

16. The purpose for taking a policy of insurance is not, in our opinion, very material. It may serve the purpose of social security but then the same should not be obtained with a fraudulent act by the insured. Proposal can be repudiated if a fraudulent act is discovered. The proposer must show that his intention was bona fide. It must appear from the face of the record. In a case of this nature it was not necessary for the insurer to establish that the suppression was

fraudulently made by the policy holder or that he must have been aware at the time of making the statement that the same was false or that the fact was suppressed which was material to disclose. A deliberate wrong answer which has a great bearing on the contract of insurance, if discovered may lead to the policy being vitiated in law.

17. It is no doubt true that there exists a distinction between a 'representation' and a 'warranty'. A Division Bench of the Madras High Court in *S.P. Maheshwari* (supra) upon taking into consideration the history of insurance laws in United States of America, in England and in India stated:

(10) One great principle of insurance law is that a contract of insurance is based upon utmost good faith *Uberrima fides*; in fact it is the fundamental basis upon which all contracts of insurance are made. In this respect there is no difference between one contract of insurance and another. Whether it be life or fire or marine the understanding is that the contract is *uberrima fides* and though there may be certain circumstances from the peculiar nature of marine insurance which require to be disclosed, and which do not apply to other contracts of insurance, that is rather an illustration of the application of the principle than a distinction in principle. From the very fact that the contract involves a risk and that it purports to shift the risk from one party to the other, each one is required to be absolutely innocent of every circumstance which goes to influence the judgment of the other while entering into the transaction.

18. While the parties entered into a contract of insurance the same shall, subject to statutory interdict, be governed by the ordinary law of contract. The insurer may not rely upon the disclosures made by the insured. It may gather information from other sources. The Madras High Court, although in our opinion, has rightly issued a note of caution to construe a 'representation' and 'warranty' as a general proposition which may operate harshly against the policy holders, itself noticed:

(12) The principles underlying the doctrine of disclosure and the rule of good faith oblige the proposer to answer every question put to him with complete honesty. Honesty implies truthfulness. But it happens that no man can do more than say what he believes to be the truth.

19. Whether in a given case the court should take judicial notice of practice followed in such cases or not would depend upon the facts and circumstances of each case. If it is found that the agent himself was interested in getting the policy executed by the Life Insurance Corporation, such common knowledge takes a back seat.

In *S.P. Maheshwari* (supra), it was stated:

(27) This brings us on finally to the topics of nondisclosure or misrepresentation which are practically the positive and negative aspects of the same thing. The effect of misrepresentation on the contract is precisely the same as that of non-disclosure; it affords the aggrieved party a ground for avoiding the contract. There are a number of dicta and one decision to the effect that life insurance is an exception to the general rule that innocent misrepresentation may afford

grounds for avoiding a policy and that the misrepresentation must be fraudulent to have this effect upon a policy of life insurance. But in order to give the insurer grounds for avoidance both under non-disclosure as well as misrepresentations, both must relate only to material information.

The said decision, therefore, is of no assistance to the appellants herein.

20. We are not unmindful of the fact that Life Insurance Corporation being a State within the meaning of Article 12 of the Constitution of India, its action must be fair, just and equitable but the same would not mean that it shall be asked to make a charity of public money, although the contract of insurance is found to be vitiated by reason of an act of the insured. This is not a case where the contract of insurance or a clause thereof is unreasonable, unfair or irrational which could make the court carried the bargaining powers of the contracting parties. It is also not the case of the appellants that in framing the aforesaid questionnaire in the application/proposal form, the respondents had acted unjustifiably or the conditions imposed are unconstitutional.

21. In *Life Insurance Corporation of India and Ors. v. MANU/SC/0804/2000 :Asha Goel (Smt) and Anr.* AIR2001SC549 , whereupon reliance has been placed by Mr. Sathish, it was held:

The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person. It has not been shown in this case that repudiation of the contract of insurance was not done by the respondent with extreme care and caution or was otherwise invalid in law.

The Division Bench of the High Court has taken all the aspects of the matter in consideration and, in our opinion arrived at a just decision.

22. Strong reliance has been placed by the learned Counsel for the appellants on *Allianz Und Stuttgarter Life Insurance Bank Ltd. v. MANU/WB/0096/1938 : Hemanta Kumar Das* AIR1938Cal641 wherein in regard to some purported statements made by the proposer in regard to his age was not found to be material as would appear from the following:

It is to be borne in mind that this was an insurance by a man who admittedly was, at any rate, at the age of over forty-five years. He himself stated that he was fifty four. Therefore, the transaction came within the category of those proposals which require at the outset the furnishing

by the "proponents" of proof of their age. Noot Behari Das was required to furnish proof of his age. He produced a horoscope. The horoscope was accepted by the company as being sufficient. Therefore, we may take that the company issued the policy upon the footing that they were insuring the life of a man whose age was fifty four. This is not a case where the proposer says that his age was fifty four and the Company merely accepted that statement at its face value and proceeded to issue a policy on that footing and subsequently, either shortly afterwards or a long time afterwards, admitted the age as stated in the policy in accordance with the provisions of Clause 9(2) thereof. This was a case where the whole transaction from the very beginning proceeded upon the basis that the company had satisfied themselves that the proposer was of the age of fifty four and then issued the policy accordingly. In my view therefore the admission contained in the endorsement at page 3 of the policy is of such a character that the defendants when the policy matured could not be heard to say that the age of the insured was anything different from what he himself had stated it to be in February 1934. It is not necessary that one should apply in terms of the principle of estoppel, because that is merely a rule of evidence. In my view, this matter goes far deeper than that. The question of the age of the deceased was a definite and determining factor in the transaction from the very outset.

23. It is not a case where the company had further enquired into the matter in regard to the question as to whether the propos or was operated upon or not.

24. In *Ratan Lal and Anr. v. MANU/BH/0116/1959 : Metropolitan Insurance Co. Ltd.* AIR1959Pat413 , a distinction was made between as to what is material and what is not material. In regard to the disclosure of facts in that case itself, it was opined:

The well-settled law in the field of insurance is that contracts of insurance including the contracts of life assurance are contracts uberrima fides and every fact of materiality must be disclosed otherwise there is good ground for rescission. And this duty to disclose continues up to the conclusion of the contract and covers any material alteration in the character of the risk which may take place between proposal and acceptance.

25. Ratio of the said decision, therefore, instead of assisting the case of appellants, runs counter to his contention.

26. Keeping in view the facts and circumstances of the case, we are of the opinion that no case has been made out for our interference with the impugned judgment. The appeal fails and is accordingly dismissed. No costs.

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MEDICAL EXAMINATION AND SUPPRESSION

AIR 1986 KERALA 201

CASE NO.: Appeal Suit No 105 of 1979

PETITIONER: P.SAROJAM

RESPONDENT: L.I.C of India

KERALA HIGH COURT

Coram : 2 P. C. BALAKRISHNA MENON AND K. SUKUMARAN, JJ. (Division Bench)

Life Insurance Corporation of India Act (31 of 1956), S.6 and S.43(1) - Insurance Act (4 of 1938), S.45 - INSURANCE - CONTRACT - Insurance Policy - Person seeking insurance is bound to disclose all material facts - Questions in proposal form relating to state of health - False answers given by assured - Insurer is entitled to repudiate policy and decline payment - *Fact that Medical Offices of Corporation had certified life assured as good is not material.*

Contract Act (9 of 1872), S.19.

A contract of insurance is uberrima fides and the person seeking insurance is bound to disclose all material facts relating to the risk involved in the policy of insurance. Where the assured was suffering from a serious heart ailment not only when the proposal was made for insurance on his life but also for several years prior to that, he was bound to disclose all material facts relating to his state of health. The assured gave false answers to the questions in the proposal form relating to his state of health inducing the insurer the Life Insurance Corporation to accept the proposal. The assured died of the heart ailment shortly after the date of the policy even before the premium for the second quarter had fallen due. In such case, the mere fact that the Medical Officer of the Corporation had certified the life assured as good would not be of much consequence. The false answers to the questions in the proposal form given by the assured relating to the state of his health vitiate the contract of insurance and the Corporation is entitled to repudiate the policy and decline payment thereunder. (1766) 3 Burr. 1905. (1974) 1 Lloyd's Rep 147, AIR 1962 SC 814 and 1983 Ker LT 492, Rel. on; (1908) 2 KB 863, Considered. (Paras 5, 8)

PRESUMPTION OF DEATH

2005 AIR SCW 2017, 2005 AIR SC 2070 ,

PETITIONER: LIFE INSURANCE CORPORATION OF INDIA

RESPONDENT: ANURADHA

DATE OF JUDGMENT: 05/08/2005

BENCH R. C. LAHOTI AND Dr. A. R. LAKSHMANAN, JJ

(A) Evidence Act (1 of 1872), S.108, S.107 - PRECEDENT - EVIDENCE - Presumption as to date/time of death of a person - Cannot be drawn in respect of person not heard of for seven years - But, can be inferred on basis of evidence, factual or circumstantial - Onus of proving that person was alive/dead on particular date/time - Lies on person who asserts it - S. 108 is exception to rule enacted in S. 107 relating to presumption of human life for thirty years.

Precedents - Presumptions of fact or law - Recognised by successive judicial pronouncements over years - To be valued as precedents

Constitution of India, Art.141.

The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Ss. 107 and 108 of the Indian Evidence Act, 1872. In the scheme of Evidence Act, though Ss. 107 and 108 are drafted as two Sections, in effect, S. 108 is an exception to the rule enacted in S. 107. The human life shown to be in existence, at a given point of time which according to S. 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in S. 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under S.107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under S. 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to S. 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before

**Fire Insurance – Definition of Terrorism: AIR 2010 JAMMU AND KASHMIR 79
"Naqash Royal Arts, M/s. v. United India Insurance Co."**

JAMMU & KASHMIR HIGH COURT

Coram : 2 J. P. SINGH AND SUNIL HALI, JJ. (Division Bench)

M/s. Naqash Royal Arts v. United India Insurance Co.

CIMA No. 102 of 2004, D/- 11 -3 -2009.

J. and K. Consumer Protection Act (16 of 1987), S.24 - Insurance Act (4 of 1938), Pre. -
CONSUMER PROTECTION - INSURANCE - PREAMBLE - WORDS AND
PHRASES - DOCTRINES - Insurance claim - Stocks of appellant insured under Fire
Policy robbed by some unidentified intruders - Policy covering risk of damage caused by
an act of 'terrorism' - Definition of expression 'terrorism' means an act having backing of
an organization - Expression is defined in light of doctrine flowing from latin maxim
'ejusdem generis' - Expression "any use of violence for purpose of putting public or any
section of public in fear" cannot be read in isolation – Appellant having suffered loss of
his insured goods in robbery cannot be construed to be an act of terrorism - Appellant not
entitled to any damage. (Paras 9, 10, 11, 12)

Employee not to seek outside Employment:

28. No employee shall accept, solicit or seek any outside employment or office whether stipendiary or honorary, without the previous sanction of the competent authority.

Part-time Work:

29. No employee shall undertake part-time work for a private or public body or a private person or accept fee therefor without the sanction of the competent authority which shall grant sanction only in exceptional cases when it is satisfied that the work can be undertaken without detriment to his official duties and responsibilities. The competent authority may in cases in which it thinks fit to grant such sanction, stipulate that any fees received by the employee for undertaking the work shall be paid, in whole or part to the Corporation.

^{**18} Provided that no employee of the Corporation shall be permitted to act as an insurance agent and no employee shall allow any member of his family to act as an insurance agent.

Employees not to be Absent from Duty without Permission or be Late in Attendance:

30. (1) An employee shall not absent himself from his duties without having obtained the permission of the competent authority, nor shall he absent himself in case of sickness or accident without submitting a medical certificate satisfactory to the competent authority.

Provided that in case of unforeseen emergency an employee a employee may be allowed to avail of one day's casual leave without prior sanction, subject to the condition that the competent authority is promptly advised of the circumstances in which prior sanction could not be obtained.

Provided further that in the case of temporary indisposition the production of a medical certificate may, at the absolute discretion of the competent authority, be dispensed with.

*(2) An employee who absents himself from duty without leave or overstay his leave shall not be entitled to draw any pay and allowances during such absence or overstay, and shall further be liable to such disciplinary measures as the competent authority may deem necessary. Provided, however, that the competent authority may treat such period of absence or overstay, if not followed by termination of service, as period spent on privilege, sick, special or extraordinary leave, but the employee shall not be entitled as of right to such treatment. Provided further that notwithstanding anything contained in Regulation 65 the competent authority may treat such absence or overstay as period spent on extraordinary leave irrespective of whether the employee has any other leave to his credit or not.

(3) An employee who is habitually late in attendance shall, in addition to such other penalty as the competent authority may deem fit to impose, have one day of casual leave forfeited for every three days he is late in a month. Where such an employee has no casual leave due to him, the period of leave

^{18**} Notified in Gazette of India, Part III – Sec. 4, dated 13-12-1975.

* Notified in Gazette of India, Part III – Sec.4 dated 7-8-1971.

to be so forfeited may be treated as privilege or extraordinary leave as the competent authority may determine.

Explanation: The Competent authority may, at its absolute discretion, condone late attendance by any employee up to two days in a month, provided the circumstances under which the employee had to attend late were beyond his control and in that case such late attendance will not be taken into consideration for debiting the casual leave account in accordance with sub-regulation (3).

Absence from Station:

31. No employee shall absent himself from his station overnight, except on duty without the prior sanction of the competent authority.

Acceptance of Gifts:

32. (1) No employee shall, except with the sanction of the Chairman, accept or permit his wife or any other member of his family to accept from any person any gift of more than a trifling value.

(2) If the question arises whether any gift is of a trifling value or not, or where an employee is in any doubt whether a gift offered to him is of a trifling value or not, a reference shall be made to the Chairman by such employee and the decision of the Chairman thereon shall be final.

Speculation in Stocks, Shares, etc.

33. (1) No employee shall speculate in any investment.

Explanation: Habitual purchase or sale of securities of notoriously fluctuating values shall be deemed to be speculation or investment within the meaning of this sub-regulation.

(2) No employee shall make or permit his wife or any member of his family to make an investment likely to embarrass or influence him in the discharge of his duties.

(3) If any question arises whether a security or investment is of the nature referred to in sub-regulation (1) or sub-regulation (2), the decision of the Corporation shall be final.

Restrictions on Borrowing and Investments:

34. (1) No employee shall, except with the previous sanction of the competent authority, lend money to any person possessing land or valuable property within the local limits of his authority, or on interest to any person.

Provided that an employee may make an advance of pay to a private servant or give a loan of small amount free of interest to a personal friend or relative, even if such person possesses land within the local limits of his authority.

(2) No employee shall, save in the ordinary course of business with a bank or a firm of standing, borrow money from or otherwise place himself under pecuniary obligation to any person within the

local limits of his authority, or any other person with whom he is likely to have official dealings, nor shall he permit any member of his family, except with the previous sanction of the competent authority to enter into any such transaction.

Provided that an employee may accept a purely temporary loan of small amount, free of interest, from a personal friend or relative or operate a credit account with a *bona fide* tradesman.

Employee in Debt:

35. An employee shall so manage his private affairs as to avoid habitual indebtedness or insolvency. An employee who is in debt shall furnish to the competent authority a signed statement of his position half-yearly on the 30th June & 31st December, and shall indicate in the statement the steps he is taking to rectify his position. An employee who makes a false statement under this regulation or who fails to submit the prescribed statement or appears unable to liquidate his debts within a reasonable time or applies for the protection of an insolvency court shall be liable to [disciplinary action.]*¹⁹

Explanation 1: For the purpose of this regulation an employee shall be deemed to be in debt if his total liabilities exclusive of those which are fully secured or those taken from the Employees Co-operative Credit Society exceed his salary for 6 months.

Explanation 2: An employee shall be deemed to be unable to liquidate his debts within a reasonable time if it appears, having regard to his personal resources and unavoidable current expenses, that he will not cease to be in debt within a period of three years.

Suspension:

36. (1) The appointing authority or any authority to which it is subordinate or any other authority empowered in that behalf (vide Schedule IV) may place an employee under suspension –

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation or trial.

(2) An employee who is detained in custody, whether on a criminal charge or otherwise for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority and shall remain under suspension until further orders.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside on appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be

¹⁹ Notified in Gazette of India, Part III Sec. 4, dated 7-8-1971.

deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) An order of suspension made or deemed to have been made under this regulation may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

***Subsistence Allowance:**

²⁰*37 An employee under suspension shall be entitled to subsistence allowance as specified hereunder:-

- (a) Where the enquiry is domestic, for the first 90 days of suspension, 50% of the salary which the employee would have drawn had he been on privilege leave; 75% of the salary thereafter.

Provided that where such enquiry is prolonged beyond a period of 90 days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding 90 days, be reduced to $\frac{1}{4}$ of such salary.

- (b) Where the enquiry is conducted by an outside agency, for the first 180 days of suspension, 50% of the salary he would have drawn had he been on privilege leave; 75% of the salary thereafter.

Provided that where such enquiry is prolonged beyond a period of 180 days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding 180 days, be reduced to $\frac{1}{4}$ th of such salary.

Treatment of the Period of Suspension:

38. When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee who has been dismissed, removed or suspended is reinstated, the disciplinary, appellate, or reviewing authority, as the case may be whose decision shall be final, may grant to him for the period of his absence from duty –

- (a) if he is honorably acquitted, the full pay and allowances which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance.
- (b) If otherwise, such proportion of pay and allowances as the disciplinary, appellate or reviewing authority may prescribe.

²⁰* Notified in Gazette of India, Part III – Sec. 4, dated 7-8-1971.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. [In a case falling under clause (b), the period of absence shall not be treated as period spent on duty, but the disciplinary, appellate or the reviewing authority may, at its discretion, grant leave for the period to the extent admissible to the employee under the rules; any period of absence which has not been treated as period spent on duty or on leave shall not count as service for any purpose under these Regulations but will not constitute break in service.]*

No order passed under this regulation shall have the effect of compelling any employee to refund the subsistence allowance payable under regulation 37.

Penalties:

39. (1) Without prejudice to the provisions of other regulations, [any one or more of]^{*21} the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed [by the disciplinary authority specified in Schedule I]* on an employee who commits a breach of regulations of the Corporation, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct –

- (a) Ensure;
- (b) *withholding of one or more increments either permanently or for a specified period;
- (c) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders;
- (d) Reduction to a lower service, or post, or to a lower time-scale, or to a lower stage in a time-scale;
- (e) Compulsory retirement;
- (f) Removal from service which shall not be a disqualification for future employment;
- (g) Dismissal

*(2) No order imposing on an employee any of the penalties specified in clauses (b) to (g) of sub-regulation 91) supra, shall be passed by the disciplinary authority specified in Schedule I without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him.

(3) The disciplinary authority empowered to impose any of the penalties (b), (c), (d), (e), (f) or (g) may itself enquire into such of the charges as are not admitted, or if it considers it necessary so to do, appoint a board of enquiry or an enquiry officer for the purpose.

(4) Notwithstanding anything contained in sub-regulations (1) and (2) above –

²¹ * Notified in Gazette of India, Part III-Sec. 4, dated 7-8-1971.

- (i) where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction of a criminal charge; or
- (ii) where the authority concerned is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in this regulation; or
- (iii) *²² where an employee has abandoned his post,

The disciplinary authority may consider the circumstance of the case and pass such orders thereon as it deems fit.

* *Explanation 1:* For the purpose of this regulation, an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or overstays his leave for a continuous period of ninety days without any intimation therefore in writing.

* *Explanation 2:* All communications under this regulation and copies of orders passed thereunder may be delivered personally to the employee if he is attending office; otherwise they shall be sent by registered post to the address noted in the service record. Where such communications or copies of orders cannot be served on him personally or by registered post, copies thereof shall be affixed on the notice board of the office in which the employee is employed, and on such affixing such communications and orders shall be deemed to have been properly served on him.

Right of Appeal:

*40. Every employee shall have a right of appeal to the appellate authority specified in Schedule I against an order imposing upon him any of the penalties specified under Regulation 39. An appeal against an order of suspension passed under Regulation 36 shall lie to the authority to which the authority which made or is deemed to have made the order of suspension is immediately subordinate. Notwithstanding anything contained in this regulation and subject to the provisions of the Life Insurance Corporation Act, Rule and Regulations no appeal shall lie against an order made by the Corporation under Regulation 36 or Regulation 39.

Period of Limitation for Appeal:

41. No appeal under this chapter shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against.

Provided that the appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

Form and Contents of Appeal:

42. (1) Every person submitting an appeal shall do so separately and in his own name.

²² * Notified in Gazette of India, Part III-Sec. 4, dated 7-8-1971.

(2) The appeal shall be addressed to the authority to whom the appeal lies, shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself.

Submission of Appeals:

43. Every appeal shall be submitted through the authority which made the order appealed against.

Provided further that a copy of the appeal may be submitted direct to the appellate authority.

Withholding of Appeals:

44. (1) The authority which made the order appealed against may withhold the appeal if –

- (i) It does not comply with any of the provisions of Regulation 42; or
- (ii) It is not submitted within the period specified in Regulation 41 and not cause is shown for the delay; or
- (iii) It is a repetition of an appeal already decided and no new facts or circumstances are adduced.

Provided that an appeal withheld under this sub-regulation shall be returned to the appellant and if resubmitted within one month thereof after complying with the provisions of Regulation 42 shall not be withheld.

(2) Where an appeal is withheld the appellant shall be informed of the fact and the reasons therefor.

(3) At the commencement of each quarter a list of the appeals withheld by any authority during the previous quarter, together with the reasons for withholding them, shall be furnished by that authority to the appellate authority.

Transmission of Appeals:

45. (1) The authority which made the order appealed against shall, without any avoidable delay, transmit to the appellate authority every appeal which is not withheld under Regulation 44 together with its comments thereon and the relevant records.

(2) The authority to which the appeal lies may direct transmission to it of any appeal withheld under Regulation 44 and thereupon such appeal shall be transmitted to that authority together with the comments of the authority withholding the appeal and the relevant records.

Consideration of Appeal:

46. (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Regulation 36 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of appeal against an order imposing any of the penalties specified in Regulation 39, the appellate authority shall consider ---

- (a) whether the procedure prescribed in these Regulations has been complied with, and If not, whether such non-compliance has resulted in failure of justice;
- (b) whether the findings are justified; and
- (c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders---
 - (i) setting aside, reducing confirming or enhancing the penalty; or
 - (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that –

- (i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose.
- (ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and
- (iii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties in clauses (b) or (g) of Regulation 39, and an inquiry under the said Regulation has not already been held in the case, the appellate authority shall itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it may deem fit.

(3) All appeals should be disposed of as expeditiously as possible and in any event not later than 6 months from the date of receipt of the appeal by the appellate authority.

Appeals against other orders:

47. (1) An employee may appeal against an order which ---

- (a) denies or varies to his disadvantage his salary or other conditions of service as regulated by any orders, regulations, rules or agreement;
- (b) interprets to his disadvantage the provisions of any such orders, regulations, rules or agreements,

to the Corporation if the order is passed by the authority which made the orders or regulations or rules or agreements, as the case may be, or by any authority to which such authority is subordinate, and to the authority which made such orders or regulations or rules or agreements if the order is passed by any other authority.

(2) An appeal against on order –

authority subordinate to him, and remit the case to any authority in any office who, if the employee had been working in that office would have adequate disciplinary powers to deal with the case, with such direction as the Chairman or the Managing Directory may deem fit in the circumstances of the case with regard to further proceedings in the case.

Memorial:

*49. An employee whose appeal under these Regulations has been rejected by the appellate authority subordinate to the Chairman, or in whose case such appellate authority has enhanced the penalty either on appeal under Regulation 40 or on review under Regulation 48 (2) may address a memorial to the Chairman in respect of that matter within a period of 6 months from the date the appellant received a copy of the order of such appellate authority.

Canvassing non-official or outside Influence:

50. (1) No employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service in the Corporation.

(2) No appeal, petition or memorial shall be addressed by any employee to the Members of the Corporation personally or to any outside authority or an authority not prescribed in these Regulations or in the Life Insurance Corporation Act.

CHAPTER IV

PAY AND ALLOWANCES

Scales of Pay:

*²³51. (1) The scales of pay, dearness allowance and other allowances (wherever payable) applicable to the employee of the Corporation in India shall be as prescribed in Schedule II hereto.

** (A) The basic pay and other allowance admissible from time to time to an employee belonging to Class II shall be regulated in accordance with the provisions contained in Schedule III.

(2) Where the scales of pay, dearness allowance or other allowances applicable to the employees of the Corporation or any class of them are revised in pursuance of any award, agreement or settlement, or otherwise, the method of fixation of pay in the new scales, the eligibility for the benefit of

²³ *Notified in Gazette of India, Part III-Sec. 4, dated 7-8-1971.

** Notified in Gazette of India, Part III – Sec. 4, dated 22-4-1976.

[] Notified in Gazette of India, Part III – Sec. 4, dated 22-4-1976

revision, the date from which the revision shall apply, and other matters connected there with or incidental thereto shall be regulated by Instructions issued by the Chairman in this behalf.

Commencement and Cessation:

52. (1) An employee shall commence to draw the salary of a post to which he is appointed from the date he assumes charge of the post if such charge is assumed in the forenoon, and from the following day if the charge is assumed in the afternoon; and shall cease to draw the same from the day he relinquishes charges, if the charge is relinquished in the forenoon and from the following day if the charge is relinquished in the afternoon.

*(2) Notwithstanding anything contained in sub-regulation (1), an employee assuming charge of higher post on promotion may, at his option, continue to draw the salary in lower post held by him prior to such promotion till his next increment in the scale of lower post falls due; where the option is so exercised the provisions of Regulation 57, shall apply to the employee from the date of such next increment but shall for all other purposes be deemed to be an employee in the higher post from the date he assumes charge of such post and shall be competent to exercise all the powers of such higher post.

Employees on Transfer:

53. When an employee is transferred from one post to another, he shall, during any interval of duty between the date of his handing over charge of the old post and the date of his taking over charge of the new post, draw the salary and allowances [of the old post].

Explanation: When an employee is transferred from a post in India to a post in a foreign territory or from a post in one foreign territory to a post in another foreign territory, he shall start drawing the salary of the new post from the date of embarkation to the new territory and shall cease to draw from that date the allowances attached to the old post. On retransfer to India such employee shall cease to draw salary and other allowances admissible to him on service overseas from the date of disembarkation in India and shall begin to draw from that date the salary and allowances of the post in India.

Admissibility of Compensatory Allowance:

54. (1) Save as provided by these Regulations, a compensatory allowance attached to a post will cease to be drawn by an employee when he vacates the post.

(2) A compensatory allowance should ordinarily be drawn only by an employee actually on duty, but the Corporation may grant compensatory allowance or a portion thereof, subject to the provisions of Regulation 70, in addition to leave salary as prescribed in Regulation 69, during the period of leave or any part thereof.

- (a) stopping an employee at the efficiency bar in the time-scale or the ground of his unfitness to cross the bar;
- (b) determining the salary and allowance for the period of suspension to be paid to an employee on his reinstatement or determining whether or not such period shall be treated as period as period spent on duty for any purpose.

Shall lie to the authority to whom an appeal against an order imposing upon him the penalty of dismissal from service would be.

(3) An appeal against an order passed under Regulation 18(2) shall lie to the Corporation.

(4) In the case of an appeal under this regulation, the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.

Review:

48. (1) Notwithstanding anything contained in these Regulations, the Corporation may, on its own motion or otherwise, after calling for the records of the case, review any order which is made or is appealable under these Regulations, and

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;
- (c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as it considers proper in the circumstances of the case; or
- (d) pass such other orders as it deems fit.

Provided that an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty.

(2) The authority to which an appeal against an order imposing any of the penalties specified in Regulation 39 lies may, of its own motion or otherwise, call for the records of the case in a disciplinary proceeding, review any order passed in such a case and pass such orders as it deems fit, as if the employee had preferred an appeal against such order.

Provided that an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty.

Provided further that no action under this sub-regulation shall be initiated more than six months after the date of the order to be reviewed.

* (3) The Managing Director or the Chairman may on his own motion or otherwise call for the records of the case of any employee in any proceedings pending before any disciplinary or appellate

Overtime:

55. Notwithstanding the fact that the whole time of an employee is at the disposal of the Corporation, the Corporation may [sanction overtime payments]*²⁴ to an employee belonging to Class III or Class IV who is required to work on Sundays or holidays or to the provisions of local enactments.

Increment:

56. (1) The following service shall count for increments:-

- (a) Service excluding periods spent on extraordinary leave in a post on a scale of pay counts in that scale, as well as in the time scale in which the employee holds lien.
- (b) Service excluding periods spent on extraordinary leave in a higher post counts for increments in a lower post.
- (c) Period spent on foreign service counts for increments.
- (d) Service in another post of the same rank, service on deputation and leave other than extraordinary leave, and extraordinary leave if directed by the Competent Authority in terms of Regulation 69 (4), counts for increments in the time-scale in which the employee is borne or on which he holds a lien.

(2) [Subject to the other provisions of these Regulations, increments shall fall due] on the first day of the month following that in which the employee completes twelve months service in accordance with sub-regulation (1) from the date of his first appointment or from the date on which his last annual increment accrued or the date of promotion (except in cases where no charge time-scale is involved), as the case may be.

Explanation 1: For the purpose of this sub-regulation, 12 months means a period of 365 days or 366 days where the month of February in a leap year is involved.

Explanation 2: Where an employee on appointment to the service of the Corporation or on appointment to a higher post joins in the forenoon of the first working day of a month, he shall be deemed to have joined on the first of the month for the purpose of the regulation.

(3) Increments shall ordinarily be drawn as a matter of course unless the employee has reached the maximum of the grade [or the employee cannot be allowed any increment in accordance with Schedule III] or it is withheld as a disciplinary measure under Regulation 39.

Provided that if in an incremental scale there is an efficiency bar an employee shall not draw increments above that bar until he has been certified fit to do so by the competent authority. On each occasion on which an employee is allowed to cross an efficiency bar which has previously been enforced against him, he shall be placed in the incremental scale at such stage as the aforesaid authorities may fix provided that such stage shall not be higher than that at which he would draw his salary if the bar had

²⁴ * Notified in Gazette of India, Part III-Sec. 4, dated 7-8-1971.

[] Notified in Gazette of India, Part III-Sec. 4, dated 22-4-1976.

not been enforced against him and further that no increments granted on the removal of a bar shall have retrospective effect.

(4) The competent authority may grant advance or special increments or temporary increments to an employee if the circumstances require it.

Re-fixation of Salary:

^{*25} 57. (1) On appointment to higher grade, the basic pay of an employee shall be initially fixed at one stage above that stage in the higher scale which is next above his basic pay in the lower scale.

Provided, however, that where the basic pay in lower scale is a stage in the higher scale, the basic pay shall be fixed at the stage in the higher scale which is next above his basic pay in the lower scale.

Provided, further that the basic pay shall be fixed at the minimum of the higher scale where such fixation results in an increase in basic pay of at least one grade increment obtaining at the minimum of the higher scale.

(2) Subject to such conditions as may be imposed from time to time, a personal allowance may be granted to employees promoted to a higher cadre in consideration of the loss in remuneration drawn by them in the lower cadre at the time of promotion.

Explanation 1: For the purpose of this regulation, special pay, as defined shall be treated as part of basic pay.

Explanation 2: In the case of officiating arrangements, the employee concerned shall draw only officiating allowance which shall be equal to the difference between the basic pay in the lower and the higher scales as determined above, provided that such officiating allowance may be reduced by the appointing authority, if the officiating arrangement is of a temporary nature and the circumstances justify it.

Bonus:

^{26**}58. No employee of the Corporation shall be entitled to profit sharing bonus. However, the Corporation may, having regard to the financial condition of the Corporation in respect of any year and subject to the previous approval of the Central Government, grant non-profit sharing bonus to its employees in respect of that year at such rate as the Corporation may think fit and on such terms and conditions as it may specify as regards eligibility for such bonus.

²⁵25 ** Notified in Gazette of India, Part III – Sec.4, dated 26-5-1978.

* Notified in Gazette of India, Part III- Sec. 4, dated 7-8-1971.

²⁶26 ** Notified in Gazette of India, Part III Sec. 4, dated 26-5-1978.

* Notified in Gazette of India, Part III Sec. 4, 7-8-1971.

Ad hoc Grants & Bonus Commission:

59. The Corporation may sanction *ad hoc* grants where the circumstances require it. The Corporation may also sanction bonus commission to its Development Officers depending upon business. [The Corporation may also sanction merit awards and incentive payments to employees in accordance with such schemes as it may approve from time to time.]*

Medical Assistance Scheme:

* 59 A. Renumbered as 81A.

CHAPTER V**²⁷**HOLIDAYS AND LEAVE******HOLIDAYS:**

60A. (1) All employees of the Corporation, excluding the Building Maintenance Staff such as watchmen, liftmen, sweepers and cleaners who are not transferred employees shall be entitled to those holidays which are declared by the respective State Governments/ Central Government as holidays under the Negotiable Instruments Act, 1881, but excluding such holidays as are expressly declared for the purpose of enabling banks to close their account.

(2) The Building Maintenance Staff who are not transferred employee shall be granted seven holidays in a calendar year.

Kinds of Leave:

60 B. Subject to the provisions of these Regulations the following kinds of leave may be granted to an employee:---

- (1) Casual Leave
- (2) Privilege Leave
- (3) Sick Leave
- (4) Extraordinary Leave
- (5) Maternity Leave
- (6) Special Leave
- (7) Quarantine Leave

General Conditions Governing Grant of Leave:

61. The following general principles shall govern the grant of leave to the employees: -

²⁷ ** Notified in Gazette of India, Part III Sec. 4, 7-8-1971.

* Notified in Gazette of India, Part III Sec. 4, 7-8-1971.

(a) Leave is earned by duty or service.

(b) It cannot be claimed as a matter of right.

When the exigencies of service of Corporation so require discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

Explanation: Sanction of leave may not be presumed and leave asked for should not be availed of unless it has been specifically sanctioned.

(c) [All leave lapses at the time of retirement, death, discharge, dismissal, resignation or termination for any reason whatsoever.]*

(d) An Employee on leave may not take up any service or accept any employment. During terminal leave or leave preparatory to retirement an employee may take up any service or accept any employment with the prior permission of the [Chairman]*²⁸ which should be granted only in rare cases.

(e) An employee is expected to avail of leave granted, fully, before resuming duty. An employee on leave cannot return to duty before the expiry of such leave except with the permission of the competent authority.

(f) An employee on leave on medical certificate may not return to duty without producing a medical certificate of fitness. The competent authority may require an employee who has availed of leave for reasons of health to produce a medical certificate of fitness even though such leave was not granted on medical certificate.

(g) An employee who remains absent after the end of his leave is entitled to no leave salary for the period of such absence and the period of overstay will be treated as extraordinary leave unless otherwise directed by the competent authority. Wilful absence from duty after the expiry of leave will be treated as a breach of these Regulations for purpose of Regulation 39.

(h) Leave may be prefixed and/ or suffixed to a holiday.

(i) Leave may not be granted to an employee under suspension. A competent authority may, however, grant leave to an employee during the pendency of disciplinary proceedings.

(j) Leave ordinarily begins on the day from which charge is handed over and ends on the day proceeding that on which charge is resumed.

(k) The leave due to an employee is the period which he has earned diminished by the period of leave actually taken.

(l) Casual leave may normally be availed of only after sanction by the competent authority but one day's casual leave may be availed of without prior sanction in case of unforeseen emergency

²⁸ * Notified in Gazette of India, Part IV, dated 30-3-1968.

provided the competent authority is promptly advised of the circumstances in which prior sanction could not be obtained.

(m) Application for privilege leave shall ordinarily be submitted 15 days before the date from which the leave is required. Applications which do not satisfy this requirement may be refused without assigning any reason.

(n) An employee shall, before proceeding on leave, intimate to the competent authority his address while on leave and shall keep the said authority informed of any change in the address previously furnished.

(o) Combination of leave: Casual leave cannot be availed of in conjunction with any other kind of leave except special leave. Subject to this condition any kind of leave under these Regulations can be granted in combination with or in continuation of any other kind of leave.

*** Casual Leave and Additional Casual Leave:**

^{*29} 62. (1) An employee may be granted casual leave up to a maximum of 15 days during the period of 12 months from 1st July to 30th June.

(2) Notwithstanding what is stated in sub-regulation (1) in the case of an employee who is governed by sub-regulation (1) of Regulation 60A in respect of holidays he may be granted additional casual leave for the number of days by which the holidays declared under the Negotiable Instruments Act in a calendar year falls short of 23 ½ days and such leave may be availed of during the period of six months from the 1st January of the following calendar year.

(3) Subject to the provision contained in first proviso to Regulation 64 any casual leave or additional casual leave not availed of by an employee shall lapse at the end of the 30th June each year.

(4) Casual leave can be availed of in conjunction with additional casual leave but not more than 6 days of either casual leave or additional casual leave or both combined may be granted at a time.

Scale on Which Privilege Leave is earned:

63. (1) The amount of privilege leave earned shall be one-eleventh part of duty. "Duty" means the period spent in the service of the Corporation but excluded periods of leave of any kind except casual leave and quarantine leave.

(2) The period of privilege leave which can be accumulated by any employee is 180 days. Leave up to a maximum of 120 days may be sanctioned at any one time.

Provided, however, an employee may be granted the full leave to his credit, subject to a maximum of 180 days, preparatory to retirement.

²⁹ * Notified in Gazette of India, Part III – Sec. 4, dated 7-8-1971.

** Notified in Gazette of India, Part III – Sec. 4, dated 12-6-1976.

**** (3)** Notwithstanding anything contained in clause (c) of Regulation 61, in the event of death of an employee while in service a payment equal to the employee's salary for the period of privilege leave to his credit as on the date of his death but not exceeding 120 days shall be allowed to the nominee in whose favour the nomination in respect of Gratuity subsists and if no such nomination subsists to the legal heirs of the employee.

****** Provided that if such death takes place while the employee is on leave preparatory to retirement, the payment shall be equal to the salary for the balance as on the date of his death of the period of privilege leave sanctioned to him.

Sick Leave:

64. An employee shall be entitled to sick leave on medical certificate at the rate of one month for each completed year of service subject to a maximum of sixteen months throughout the service [in the Corporation.]**³⁰

* Provided that the casual leave and the additional casual leave admissible to an employee under sub-regulations (1) and (2) of Regulation 62 and not availed of by him shall be converted into additional sick leave on full pay up to a maximum of 2 months or on half pay upto a maximum of four months during the entire period of his service to be availed of by him on medical certificate.

* Provided further that if an employee is suffering from any of the five major disease of cancer, leprosy, T.B., Poliomyelitis and mental disease, he may be allowed special sick leave on half pay for a period not exceeding six months if he has to his credit no sick leave admissible to him.

Extraordinary Leave:

65. Extraordinary leave may be granted to an employee when no leave is due to him under these Regulations. Except in exceptional Circumstances, the duration of extraordinary leave shall not exceed three months on anyone occasion and 12 months during the entire period of an employee's service. A competent authority may commute retrospectively periods of absence without leave into extraordinary leave.

Maternity Leave:

66. A competent authority may grant to a female employee maternity leave for period of which may extend upto the end of 3 months from the date of its commencement or to the end of six weeks from the date of confinement, whichever is earlier.

Provided that such leave shall not exceed 12 months during the entire period of an employee's service.

³⁰ * Notified in Gazette of India, Part III – Sec. 4, dated 7-8-1971.

** Notified in Gazette of India, Part III – Sec. 4, dated 12-6-1976.

Special Leave:

67. (1) The Chairman may, at his absolute discretion, grant special leave to any employee. Such leave shall not be debited to any leave account.

*(2) The Chairman may also direct by Instructions issued in this behalf that special leave may be granted to employees for (i) injury from accidents arising from and in the course of employment, (ii) undergoing sterilization operations, (iii) participating in tournaments or (iv) any other purpose whether of the same nature or not, specify the duration of leave for any purpose and the conditions subject to which such leave may be granted and delegate the authority to any officer to grant the leave.

Quarantine Leave:

68. Quarantine leave is leave of absence from duty necessitated by orders not to attend office in consequence of the presence of infectious diseases in the household of a Corporation employee. Such leave may be granted by the competent authority on the certificate of a Medical or Public Health Officer for a period not exceeding 21 days, or in exceptional circumstances, 30 days. Any leave necessary for quarantine purposes in excess of this period shall be treated as ordinary leave. A Corporation employee on quarantine leave is not treated as absent from duty. When the employee himself is suffering from infectious disease, he shall not be entitled to quarantine leave. He shall be entitled only to privilege, sick or extraordinary leave, as the case may be.

Note 1: The term "Medical or Public Health Officer" occurring in this regulation includes Medical Officer-in-Charge of any Government (Civil or Military) or Municipal hospital or dispensary, or a qualified medical practitioner appointed by the corporation. In the case of a Corporation employee at whose place of duty there is no Government or Municipal hospital or dispensary, it includes the Medical Officer-in-Charge of a Government or Municipal hospital or dispensary situated nearest to his place of duty or a qualified medical practitioner appointed by the Corporation.

Note 2: Cholera, small-pox, plague, diphtheria, typhus fever and cerebro spinal meningitis may be considered as infectious diseases for the purposes of this regulation. In the case of chicken-pox quarantine leave should not be sanctioned unless the Medical Officer responsible considers that because of doubt as to the true nature of the disease, for example, small-pox, there is reason for the grant of such leave. In the case of a Corporation employee stationed in areas under the administration of State Governments, such other diseases as may have been declared by those Governments as infectious for the purpose of their quarantine leave rules may also be considered as infectious disease for the purpose of this regulation. Such Corporation employee will, however, be eligible for the purpose of this regulation. Such Corporation employee will, however, be eligible for quarantine leave for any of the diseases mentioned above even though it has not been declared in orders issued by the State Government concerned to be an infectious disease.

Leave Salary:

69. (1) *Casual Leave*: An employee on casual leave shall be treated as on duty for the purpose of leave salary.

(2) *Privilege Leave*: An employee on privilege leave shall, during the period of privilege leave, draw leave salary equal to the salary he drew on the day preceding the date on which he proceeded on leave.

^{*31} (3) *Sick Leave*: Sick leave will only be on half pay and an employee on half pay sick leave shall draw half of the aggregate of basic pay, special pay, personal pay, personal allowance and functional allowance, if any. In addition he shall also draw dearness allowance, additional dearness allowance, house rent allowance, city compensatory allowance, adjustment allowance and hill allowance (where payable) appropriate to half the aggregate of basic pay and special pay. Any period of sick leave on half pay may be converted into sick leave on full pay for half the period at the option of the employee and twice the amount of commuted leave shall be debited against the half-pay leave.

(4) *Extraordinary Leave*: No salary is admissible during the period of extraordinary leave. The period spent on such leave shall not count for increments.

^{**32} Provided that in cases where the competent authority is satisfied that the leave was taken on account of illness or for any other cause beyond the employee's control he may direct that the period of extraordinary leave may count for increments.

(5) *Maternity Leave, Special leave and Quarantine Leave*: an employee on maternity leave, special or quarantine leave shall draw leave salary equal to the salary he drew on the day preceding that on which he proceeded on such leave

(6) Notwithstanding anything contained in this regulation, an employee would be entitled to the increment in the time-scale falling due when he is on leave other than extraordinary leave and he shall draw salary from the date such increment falls due.

Compensatory Allowance on Leave:

70. The competent authority may (subject to such Institutions as the Chairman may issue from time to time)* permit an employee on leave to draw compensatory allowance of a portion thereof in addition to leave salary if it is satisfied that the whole or considerable part of the expenses to meet which the allowance was given continued during leave.

Joining Time:

71. (1) Joining time may be granted to an employee to enable him—

³¹ * Notified in Gazette of India, Part III-Sec. 4 dated 7-8-1971.

³² Notified in Gazette of India, Part IV, dated 18-6-1966.

- (a) to join a new post to which he is appointed while on duty in his old post or
- (b) to join a new post on return from leave of not more than four months duration, or although the duration of leave exceeds four months, the employee has not had sufficient notice of his appointment to the new post.

(2) Jointing time shall be regarded as duty for the purpose of these Regulations and the salary during joining time shall be regulated in accordance with Regulation 53.

Joining Time – How Calculated:

72. (1) Not more than one day is allowed to an employee in order to join a new post when the appointment to such post does not necessarily involve a change of residence from one station to another. A holiday counts as a day for the purpose of this sub-regulation.

(2) For transfers involving change of station, six days are allowed for preparation and, in addition, a period to cover the actual journey calculated as follows:-

(a) An Employee is allowed –

- (i) For the portion of the Actual time occupied in the journey.
journey which he travels
by air-craft
- (ii) For the portion of the journey which he travels or might travel ---

One day for each

By railway	400 Kilometers	Or any longer time actually occupied in the journey.
By ocean steamer	320 Kilometers	
By river steamer	128 Kilometers	
By motor vehicle or horse drawn conveyance	128 Kilometers	
In any other way	24 Kilometers	

(b) (i) For purposes of journey by air under clause (a)(i) a part of a day shall be treated as one day.

(ii) A day is also allowed for any fractional portion of any distance prescribed in clause (a) (ii).

(c) When part of the journey is by steamer the limit of six days for preparation may be extended to cover any period unavoidably spent in awaiting the departure of the steamer.

(d) Travel by road not exceeding five miles to or from a railway station or (steamer ghat) at the beginning or end of a journey does not count for joining time

- (e) A Sunday does not count as a day for the purpose of the calculations in this sub-regulation.

(3) An employee who is posted to a foreign country shall be allowed 15 days preparation time and the time actually required for the journey.

Joining Time cannot be claimed as a Matter of Right:

73. Joining time cannot be claimed as a matter of right. It may be curtailed at the discretion of the competent authority.

Explanation: Where the joining time is curtailed the competent authority may grant special leave, not exceeding the period of joining time curtailed, to enable an employee to go back to his previous place of duty for winding up his establishment or for any other connected purpose.

Overstay after Joining Time:

74. An employee who does not join his post within the joining time allowed to him, except under circumstance beyond his control, shall not be entitled to any pay or leave salary after the end of the joining time. Willful absence from duty after the expiry of joining time may be treated as a breach of these Regulations for the purpose of Regulation 39.

CHAPTER VI

FOREIGN SERVICE

Deputation of Employee to Other Services:

75. (1) No employee of the Corporation shall be sent on foreign service except with the approval of the Chairman.

Provided that no employee shall be sent on Foreign Service against his will.

(2) Transfer to Foreign Service should ordinarily not be granted unless –

- a) The duties to be performed are such that they should necessarily be performed by an employee the Corporation or involves such technical knowledge, experts in which are not readily available from other sources;
- b) That transferee at the time of transfer holds a permanent post in the Life Insurance Corporation;
- c) The terms granted are not so greatly in excess of remuneration which an employee would receive in the service of the Corporation as to render foreign service appreciably more attractive than the Corporation's service.

(3) Where the services of an employee of the Corporation are placed at the disposal of a foreign employer it shall be a condition, of the deputation that the foreign employer shall, during the period of such deputation, bear the entire cost of the services of the employee including the following, viz ---

- (a) Salary during joining time;
- (b) Travelling allowances payable to the employee to enable him to join his appointment under the foreign employer and to return to his appointment in the Corporation on the termination of his deputation;
- (c) Leave salary for the leave earned period during the period of deputation;
- (d) The employer's contributions to the employee's account in the Corporation's Provident Fund.

In addition, the foreign employer may also be required to make a contribution towards any gratuity or other sum, for which the employee may become eligible, on such scale as may be fixed by the Chairman.

CHAPTER VII

MISCELLANEOUS

Provident Fund:

76. ³³(1) Every employee of the Corporation, other than an employee on probation or an employee appointed on temporary basis or an employee who is contributing to an approved Superannuation Fund, shall contribute to the Provident Fund at 8 1/3 per cent of the aggregate of his basic pay including special pay and if he is a transferred employee, on that portion of the personal pay which shall be equal to the amount by which his basic pay including special pay from time to time in the Corporation falls short of his basic pay including special pay as on 31-8-1956. The Corporation shall contribute to the Fund every month an amount equal to the actual contribution of each member subject to a maximum of 8 1/3 per cent of the aggregate of the basic pay including special pay and if he is a transferred employee, on that portion of the personal pay which shall be equal to the amount by which his basic pay including special pay from time to time in the Corporation falls short of his basic pay including special pay as on 31-8-1956. A separate Trust shall be established in respect of such Fund.

³⁴ (1A) Where an employee is an employee in *** (Class II or) Class III or Class IV the provisions of sub-regulation (1) shall with effect from 1st April, 1973, apply as if for the figure "8 1/3" appearing therein, the figure "10" had been substituted.

³³ Notified in Gazette of India, Part IV, dated 2-3-1968 and Part III Sec.4, dated 7-8-1971.

³⁴ **Notified in Gazette of India, Part III-Sec. 4, dated 4-5-1974

*** Notified in Gazette of India, Part III -Sec. 4, dated 22-4-1976

* Notified in Gazette of India, Part IV, dated 20-1-1962.

£ (1B) Where an employee is an employee in Class I, the provisions of sub-regulation (1) shall with effect from 1st April, 1973, apply as if for the figure "8 1/3" appearing therein, the figure "10" had been substituted.

*(2) In the case of transferred employees of the Oriental Government Security Life Assurance Company Limited, who are contributing to the Pension Fund of that Company which is being continued with modifications as a separate Fund for such employees only, they shall be entitled to Pension according to the Rules of that Fund. [Such employees may, however, be permitted to contribute to the Provident Fund established by the Corporation but the Corporation shall not be required to make any contribution to the Provident Fund in respect of such employees.]**

Gratuity:

77. (1) (a) A permanent employee who has been in continuous service of the Corporation (including service with the insurer) for not less than 15 years (excluding period of probation or temporary service in respect of employees recruited on or after 1-9-1956);

- (i) Whose services are terminated by the Corporation for any reason whatsoever; or
- (ii) Who voluntarily resigns from the service of the Corporation;

(b) a permanent employee ---

- (i) Who dies while in the service of the Corporation; or
- (ii) Who retires from the service of the Corporation; or
- (iii) Whose services are determined either due to continued illness or accident incapacitating him from the proper discharge of his duties; or
- (iv) Whose services are dispensed with owing to reduction of staff or reorganization of establishment;

^{35****} (2) Gratuity admissible to an employee shall be at the rate of one months' terminal basic pay including special pay, for each completed year of continuous service (inclusive of regular salaried service with the insurer) in respect of first 15 years and at the rate of half a month's terminal basic pay including special pay for each completed year of further continuous service; so, however, that the total gratuity admissible shall not exceed a maximum of 20 month's terminal basic pay including special pay or Rs. 30,000/- whichever is less.

Note: - For the purpose of this sub-regulation any period spent by an employee on extraordinary leave, exceeding 12 months during the entire period of his service shall be excluded.

⊘ (2A) In case of a Class I Officer who has been promoted from Class III cadre of or after the 1st day of April 1973 and who dies or retires after promotion, the gratuity payable to him shall not be less

³⁵ **** Notified in Gazette of India, Part III -Sec. 4, dated 7-8-1971

£ Notified in Gazette of India, Part III -Sec. 4, dated 10-7-1976

⊘ Notified in Gazette of India, Part III -Sec. 4, dated 4-11-1978

than the gratuity that would have been payable to him if his services had been terminated while he was in class III cadre.

****³⁶(3)** Notwithstanding anything stated above, in the case of a transferred employee, gratuity payable under this regulation shall in no case be less than the gratuity to which the employee would have been entitled if the termination of his service had taken place on 31-8-1956.

£ (3A) Where an employee is an employee in Class III or Class IV gratuity admissible in his case shall be determined in accordance with the provisions of the foregoing sub-regulations or calculated (subject to the terms of the proviso herein) under the Payment of Gratuity Act, 1972, as it stands on 24th January, 1974 (hereinafter referred to as the said Act), whichever is more favourable to him;

Provided that

- (a) While calculating the gratuity under the said Act the monthly salary of an employee shall be deemed to be his terminal basic pay (including special pay), Dearness Allowance and additional Dearness Allowance;
- (b) The provisions of the said Act shall be applied notwithstanding that his monthly salary as above is over Rs. 1,000/-;
- (c) In the case of an employee who dies while in the service of the Corporation after having completed 15 years of continuous service, the gratuity under the said Act shall be calculated at the rate of one month's salary for every completed year of service, and in all other cases at the same rate as specified in the said Act; and
- (d) Where the gratuity calculated under the said Act in the manner specified herein exceeds Rs. 20,000/-, the gratuity payable shall be deemed to be Rs. 20,000/- only.

***³⁷(4)** Subject to any lien the Corporation may have on the amount of gratuity admissible to an employee, the Corporation shall pay the employee or his nominee or nominees or if no nomination is made or is subsisting, his heirs, the amount of gratuity admissible under this regulation.

***(5)** Notwithstanding anything contained in the foregoing sub-regulations ---

- (i) where the penalty of dismissal is imposed on an employee for any act involving violence against the management or other employees or any riotous or disorderly behavior in or near the place of employment, the gratuity payable to him shall stand wholly forfeited; and
- (ii) where the penalty of compulsory retirement, removal from service or dismissal is imposed on an employee for any act involving the Corporation in financial loss, the gratuity payable to him shall stand forfeited to the extent of such loss.

³⁶** Notified in Gazette of India, Part III, Sec. 4, dated 7-8-1971.

£ Notified in Gazette of India, part III-Sec. 4, dated 4-5-1974.

³⁷ * Notified in Gazette of India, part III-Sec. 4, dated 4-5-1974.

Superannuation Fund:

78. (1) Employees who are members of an approved Superannuation Fund shall be governed by the rules of such fund.

(2) In the case of transferred employees who were eligible to pension benefits under the rules of the insurer and who were not members of an approved Superannuation Fund, pension may be granted in respect of service prior to 1-9-1956 on a suitable basis to be determined by the Corporation.

Travelling Allowance Rues:

79. Tours on official business may be sanctioned by an officer not below the rank of a Divisional Manager [or such lower authority as may be so authorized by the Chairman.]**³⁸

The rates of travelling allowance and halting allowance and the conditions under which they become payable shall be regulated in accordance with Schedule V.

Transfers:

80. The competent authority may transfer an employee from one department another in the same office or from one office of the Corporation to another office.

Overseas Allowance etc., :

³⁹*** 81. The Corporation may grant foreign allowance, local allowance, children's education allowance and kit allowance to its employee posted abroad and provide them free furnished accommodation or grant appropriate house rent allowance and also grant them such other allowances as may be decided upon from time to time by the Corporation.

*** Medical Assistant Scheme:**

*81A. The Corporation may grant medical benefits to its employees in accordance with such scheme of schemes as it may approve from time to time.

Conveyance Facilities:

82. The Corporation may provide conveyance facilities to its employees and/or grant loans for the purchase of conveyances subject to the provisions of section 27A (1)(m) of the Insurance Act as applied to the Life Insurance Corporation of India.

³⁸ **Notified in Gazette of India, Part IV, dated 18-6-1966.

³⁹*** Notified in Gazette of India, Part III- Sec. 4, dated 23-4-1977.

* Notified in Gazette of India, Part III – Sec. 4, dated 7-8-1971.

Travel Allowance for Leave etc.,:

£ 83. (1) The Corporation may, subject to such conditions as may be laid down by the Corporation from time to time, grant travel allowance to its employees for travel to home-town during leave. Provided that the aforesaid allowance for travel during leave to any place other than home-town may be availed by the employees, subject to such conditions as may be specified by the Corporation.

⌘(2) The Corporation may, subject to such conditions as may be laid down by the Corporation from time to time, on death or retirement of an employee belonging to Class I and Class II, grant reimbursement of travelling expenses to his family or the employee and his family, as the case may be for, travel to home town.

⌘ Entertainment Facilities:

⌘84. The Corporation may grant such entertainment facilities to its employee belonging to Class II as may be decided by the Corporation from time to time.

*** Employee to furnish Address:**

*⁴⁰ 85. Every employee shall intimate his full residential address to the office in which he is working and any change in the address previously furnished. All communications sent to the last address so intimated to the office shall be deemed to have been properly sent to him.

Relaxation:

86. The Executive Committee may, in the interest of the Corporation, for reasons to be specified in its resolution, relax any of the provisions of these Regulations in individual cases.

Repeals:

87. The Life Insurance Corporation of India (Staff) Regulations, 1956 are hereby repeated.

⁴⁰ * Notified in Gazette of India, Part III – Sec. 4, dated 7-8-1971.
 £ Notified in Gazette of India, Part III, Sec. 4, dated 18-11-1972.
 ⌘ Notified in Gazette of India, Part IV, dated 8-1-1966.

SCHEDULES

*⁴¹ SCHEDULE I (See Regulations 6, 39 & 40)

Appointing, Disciplinary and Appellate Authorities.

Category of employees		Appointing Authority	⚡ Disciplinary Authority (For all Penalties)	Appellate Authority
(a)	Class I:			
	Posts in the cadres of ZM and above and equivalent cadres:	Corporation	Corporation	----
	Posts in the Cadres DZM/Sr. DM, DM and equivalent cadres:	Executive Committee	Executive Committee	Corporation
	Posts in the cadres of ADM/Sr. BM and equivalent cadres:	Chairman	Chairman	Executive Committee
	Posts in the cadres of BM/AO and equivalent cadres:	MD	MD	Chairman
	Other Posts in Class I:	ZM/D(P)/ C (A & I)	ZM/D(P)/ C (A & I)	MD
(b)	Class II:	DM	DM	ZM
(c)	Class III & IV:			
	Superintendents:	ZM/ D(P) / C (A & I)	ZM/ D(P) / C (A & I)	MD
	Other employees:	DM	DM	ZM/ D(P) / C (A & I)

Note: (1) Notwithstanding the provisions contained in this Schedule, the immediate superior Class I Officer shall have authority to impose the penalty of censure under Regulation 39(1) (a) and any appeal against the imposition of such penalty shall lie to an officer one step higher.

**** (2)** In this Schedule C (A & I) means the Chief (Audit & Inspection), Z. M. means Zonal Manager in charge of the Zone; D(P) means the Executive Director (Personnel) and M.D. means Managing Director. Where the authority is D.M., it shall mean (a) in a Division, the Officer-in-Charge of the Divisional Office not below the rank of Divisional Manager; (b) at the Zonal Office and Central Office, an Officer not below the rank of Divisional Manager, duly authorized by the Z.M. and D (P) respectively; (c) in respect of the Internal Audit and Inspection Department at a place other than Central Office, the Deputy Secretary (A & I) and (d) in respect of the Internal Audit & Inspection Department at the Central Office, and officer, not below the rank of Divisional Manager duly authorized by the C (A & I).

⁴¹ *Notified in Gazette of India Part III – Sec. 4, dated 7-8-1971.

** Notified in Gazette of India, Part III – Sec. 4, dated 16-12-1972.

*** SCHEDULE II (See Regulation 51)**

Scales of pay, Dearness Allowance and other Allowances applicable to the employee of the Corporation of India.

A. Scales of Pay:

***I. Class I Officers:**

1.	Managing Directors	Rs. 3250 (fixed)
2.	(i) Zonal Managers/ Chiefs of Departments at Central Office.	(a) Ordinary Scale Rs. 2000 – 125-2500
	(ii) Chief Engineer / Chief Architect.	(b) Selection Scale Rs. 2500 -125-3000.

Note: 1: Officers in selection scale posted in charge of a Department at the Central Office will be designated as Executive Directors.

Note: 2: While Chiefs of Departments at Central Office would normally be drawn from the cadres of Zonal Managers where suitable officers for filling up these posts are not available from this cadre they may be drawn from the cadre of Deputy Zonal Managers / Senior Divisional Managers / Secretaries / Actuaries / Accountants at Central Office and they will be designated as Chief-in-Charge.

3:	(i) Deputy Zonal Managers / Senior Divisional Managers and Secretaries / Actuaries/ Accountants at the Central Office	Rs. 1600-100-2000-125-2250
	(ii) Deputy Chief Engineers/ Deputy Chief Architects.	
4:	(i) Divisional Managers and Secretaries / Actuaries / Accountants at the Zonal Offices / Deputy Secretaries (A & I) / Deputy Secretaries / Deputy Actuaries / Deputy Accountants at the Central Office.	Rs. 1250-50-1300-75-1600-100-2000
	(ii) Superintending Engineers / Senior Surveyors of Works / Senior Architects.	
5:	(i) Assistant Divisional Managers / Senior Branch managers and Assistant Secretaries / Assistant Actuaries / Assistant Accountants at the Central Office and Zonal Officers.	Rs. 1000-50-1300-75-1675.
	(ii) Executive Engineers / Surveyors of Works / Deputy Senior Architects.	
6:	(i) Branch Managers / Administrative Officers.	
	(ii) Assistant Executive Engineers / Assistant Surveyors of Works / Architects.	Rs. 770-40-1050-50-1300.

- 7: (i) Assistant Branch Managers / Assistant Administrative Officers Rs. 530-40-1050
(ii) Assistant Engineers / Assistant Architects.

Note: A separate seniority list shall be maintained in respect of Officers appointed to posts specified in entry (ii) under various serial numbers.

***⁴²II. Class II (Development) Officers:**

Grade I – Rs. 250-20-390-25-415-EB-25-490-30-640-EB-30-850

Grade II – Rs. 175-10-195-15-240*

* Note:

(i) The above scales of pay shall come into effect on the 1st April 1976, but where the amount of basic pay, personnel pay, dearness allowance, all other allowances, non-profit sharing or ex-gratia bonus paid to a Development Officer for the period of 12 months for which his performance was appraised under the rules of the Corporation immediately prior to the 1st April, 1976 as also the expenses payable or reimbursed to him or incurred by the Corporation on him in respect of travelling, residential telephone, Insurance premium and taxes on motor vehicles for the said period, was not more than 35% of the eligible premium in that period, he may be given the benefit of the appropriate new scale with effect from 1st April, 1973.

(ii) There shall be no new appointment to Grade II by recruitment. Reversion, or other-wise on or after 1st April, 1976.

**** III. Class III (Clerical and Supervisory Staff):-**

1. Superintendents Rs. 370-25-470-30-830.

2. Higher Grade Assistants Rs. 265-20-385-EB-25-735.

Note: Internal Audit Assistants who are in Higher Grade Assistants scale will receive a special pay of Rs. 40/- per month for the first 5 years of service as such, Rs. 45/- per month for the next five years of service as such, Rs. 50/- per month after 10 years of Service as such.

3. Section Heads Rs. 225-15-255-20-395-25-670.

Note: Assistants who are promoted to the Section Heads cadre on or after 1st April, 1973 shall have the option to continue in the scale of pay of Assistants set forth against serial No. 5 herein and draw and appropriate Special Pay specified below or to be fitted in the above scale of Section Heads. Such option shall be exercised within thirty days from the date of promotion and the option once exercised shall be final.

⁴² *Notified in Gazette of India, Extraordinary Part III – Sec. 4, dated 22-4-1976.

** Notified in Gazette of India, Part III – Sec. 4, dated 4-5-1974.

Rs. 40/- per month in the first five years of service as such
 Rs. 45/- per month in the next five years of service as such
 Rs. 50/- per month in the next five years of service as such

4. Stenographers

Rs. 210-15-225-20-405-25-430-EB-25-630.

Note: Stenographers in the Stenographers' grade selected to work with the officers of the following rank will receive a special pay on the following scales: ---

Chairman	:	Rs. 65/- per month
Directory / Zonal Managers	:	Rs. 55/- per month
Deputy Zonal Managers and officers of equivalent rank	:	Rs. 40/- per month
Divisional Managers	:	Rs. 30/- per month

Stenographers in the Stenographers scale who are not attached to the officers of the above ranks will receive a special Pay of Rs. 20/- per month.

5.	Assistants	Rs. 175-10-215-15-290-20-410-EB-25-585
6.	Receiving and Paying Cashiers	Same as Assistants scale with a Special pay of Rs. 25/- per month.
7.	Typists	Same as Assistants scale with a Functional Allowance of Rs. 25/- per month.
8.	Telephone Operators	
9.	Addressing Machine and Punch Card Operators	
10.	Comptometer Operators	
11.	Projectionists receiving an allowance	

Note: (1) Graduates appointed to categories 4 to 11 will receive two increments on confirmation.
 (2) A permanent employee in categories 4 to 11 will receive two increments with effect from the first day of the month following that in which it is declared that he has passed the first degree examination.

12. Record Clerks Rs. 150-6-162-8-218-10-238-EB-10-258-12-270-15-390

Note: Banda and Duplicating Machine Operators who are in this scale will receive a functional allowance of Rs. 15/- per month.

*⁴³IV. Class IV : (Subordinate Staff):

1. Sweepers and Cleaners	Rs. 120-5-160-6-196-7-224-8-240
2. Sepoys, Hamals, Head Peons, Liftmen And watchmen, Daftaries	Rs. 125-5-165-6-201-7-229-8-245
3. Drivers	Rs. 166-5-181-6-199-7-234-8-274-9-310

⁴³ Notified in Gazette of India, Part III Sec. 4, dated 4-5-1974.

- Notes:
- (1) Head peons, Liftmen and Watchmen will receive a special Pay of Rs. 10/- per month
 - (2) Sepoys operating franking machines as a major part of their duties will receive a functional allowance of Rs. 10/- per month.

IV - A: Addition to Basic Pay after reaching the maximum of the Scale.

(1) An employee in Class III (Clerical and Supervisory) or Class IV (Subordinate Staff) who has reached the maximum of the scale of pay applicable to him may subject to the record of his work being found satisfactory, be granted for every two years of service put in by him after reaching such maximum, an addition to his basic pay which shall be equal to the last increment drawn by him in the scale.

Provided that where an employee is not granted such addition at the end of two years of service from the date of last increment or addition, as the case may be, his case shall fall due for review in each calendar year in the month following that in which he completes twelve months of service in that year, so long as he has not been allowed the addition, and if it is decided to allow the addition, it shall take effect from the first of the month in which the review has fallen due in the calendar year in which the decision is taken to allow the addition.

Provided further that no employee shall be allowed more than three such additions.

(2) The competent authority to grant the addition referred in sub-clause (1) shall be the authority competent to allow the employee to cross efficiency bar.

B. DEARNESS ALLOWANCE:

(i) The scale of Dearness Allowance applicable to Class I Officers of the Corporation in India shall be as under: -

<i>Basic Pay:</i>				<i>D.A.</i>
				Rs.
Upto Rs. 900	...	...	...	200
Rs. 901---1000	...	...	...	185
Rs. 1001---1100	...	...	...	170
Rs. 1101---1200	...	...	...	155
Rs. 1201---1300	...	...	...	140
Rs. 1301---1600	...	...	...	125
Rs. 1601---2250	...	...	...	100
Over Rs. 2250	...	...	...	Nil

(ii) The Scale of Dearness Allowance applicable to employees in Class II (Development) Officers shall be as under: -

<i>Basic Pay:</i>				<i>D.A.</i>
				Rs.
Upto Rs. 200	...	...	...	100
Rs. 201-225	...	...	...	110
Rs. 226-300	...	...	...	120
Rs. 301-350	...	...	...	130
Rs. 351-400	...	...	...	140
Rs. 401-450	...	...	...	175
Rs. 451 and above	...	...	...	200

(iii) The scale of Dearness Allowance applicable to class III and Class IV employees of the Corporation India will be determined as under:

Index	All India Average Consumer Price Index Numbers for Industrial Workers.
Base Year	1960 = 100
Rate of Neutralization	75% in the case of Class III employees and 100% in the case of Class IV employees.
Revision of Dearness allowance	On quarterly basis for every four points rise or fall.
Rate	3% in the case of Class III employees and 4% in the case of Class IV employees. For this purpose, quarter will mean a period of three months ending on the last day of March, June, September or December. The final index figures as published in the Indian Labour Journal [or the Gazette of India whichever publication is available earlier.] will be the index figure which shall be taken for the purpose of calculation of Dearness Allowance for a particular month, the quarterly average for the last quarter for which the final index figures are available on the 15 th of April will be taken. Actual payment of this revised Dearness Allowance will be made in the month following that in which the relevant index figures are available.

Note: (i) Basic salary shall include special pay where the same is paid.

(ii) "Additional Dearness Allowance" in those cases where the same is paid at present shall continue to be paid in addition to the Dearness Allowance as set out above

C. ADJUSTMENT ALLOWANCE

(i) Class I Officers:

Class I Officers will receive an Adjustment Allowance at the following rates:

Basic Pay:				Adjustment Allowance
				Rs.
Upto Rs. 550	...	...	...	50
Rs. 551-600	...	...	...	60
Rs. 601-650	...	...	...	70
Rs. 651-700	...	...	...	80
Rs. 701-750	...	...	...	100
Rs. 751-1300	...	...	...	90
Rs. 1301-1400	...	...	...	80
Rs. 1401-1600	...	...	...	70
Rs. 1601-2000	...	...	...	50
Over Rs. 2000	...	...	...	Nil

*⁴⁴The above rates of Adjustment Allowance payable to Class I Officers shall stand increased as indicated below with effect from 1st November, 1970 and again from 1st November, 1971:-

Pay Range:				Increase in Adjustment Allowance
Rs.				Rs.
Rs. 530-600	...	...	...	30.00
Rs. 601-1675	...	...	...	40.00
Rs. 1676-1800	...	...	...	20.00
Rs. 1801 and above	...	...	...	Nil

(ii) Class II (Development) Officers:

Employee under Class II (Development) Officers shall be paid an Adjustment Allowance at the following rates:

Basic Pay:				Adjustment Allowance
				Rs.
Upto Rs. 250	...	...	...	Nil
Rs. 251 ---- 275	...	...	...	5
Rs. 276 ---- 300	...	...	...	15
Rs. 301 ---- 400	...	...	...	20
Rs. 401 ---- 500	...	...	...	40
Rs. 501 ---- 550	...	...	...	50
Rs. 551 ---- 600	...	...	...	60
Rs. 601 ---- 650	...	...	...	70
Rs. 651 ---- 700	...	...	...	80
Rs. 701 ---- 750	...	...	...	100

** The above rates of Adjustment Allowance payable to Class II (Development) Officers shall stand increased as indicated below with effect from 1st November, 1970 and again from 1st November, 1971:-

Pay Range:				Increase in Adjustment Allowance
Rs.				Rs.
Upto 250	...	...	...	10.00
Rs. 251- 400	...	...	...	20.00
Rs. 401- 600	...	...	...	30.00
Rs. 601 - 760	...	...	...	40.00

D. HOUSE RENT ALLOWANCE:

**** (i) Class I Officers:**

Class I Officers will receive House Rent Allowance at the rate of 15% of pay per month, subject to minimum of Rs. 75/- and a maximum of Rs. 350/- per month.

⁴⁴ [] Notified in Gazette of India, Part III – Sec. 4, dated 4-5-1974.

* Notified in Gazette of India, Part III – Sec. 4, dated 7-10-1972.

** Notified in Gazette India, Part III – Sec. 4, dated 1-7-1978.

(ii) Class II (Development) Officers:

Class II (Development) Officers will receive House Rent Allowance at the following rates per month:-

(a) For those drawing pay upto Rs. 750. 15% of pay subject to the following minimum:-

Basic Pay				House Rent Allowance:
				Rs.
Upto 150	...	...	...	25
Rs. 151 --- 190	...	...	...	30
Rs. 191 --- 250	...	...	...	40
Rs. 251 --- 290	...	...	...	50
Rs. 291 --- 350	...	...	...	60
Rs. 351 --- 500	...	...	...	75

(b) For those drawing pay above Rs. 750. 15% of the first Rs. 750 of pay and 10% of excess of pay over Rs.750

****⁴⁵(iii) Class III (Clerical & Supervisory) and Class IV (Subordinate) Staff:**

The House Rent Allowance shall be at the rate of 10% for the basic pay (including Special pay) with a minimum of Rs. 28/- per month in the case of Class employees and with a minimum of Rs. 22/- per month in the case of Class IV employees, subject to a maximum of Rs. 40/- in either case.

E. CITY COMPENSATORY ALLOWANCE:

(i) Class I Officers:

Subject to such conditions as may be imposed for time to time under instructions issued in this regard Class I Officers will receive City Compensatory Allowance at the following rates:-

- (a) Officers at Bombay, Delhi, Calcutta and Madras 8% of pay subject to a maximum of Rs. 75/-
- (b) Officers at Ahmedabad, Bangalore, Poona, Hyderabad, Kanpur, Lucknow and Nagpur 6% of pay subject to a maximum of Rs. 50/-
- (c) Officers at Varanasi, Agra, Allahabad, Jaipur, Madurai, Patna, Indore, Jabalpur, Sholapur, Amritsar, Bhopal and Coimbatore Rs. 10/- upto a pay of Rs. 740/-

(ii) Class II (Development) Officers, Class III (Clerical & Supervisory) Staff and Class IV (Subordinate) Staff:

⁴⁵ ** Notified in Gazette of India, Part III Sec. 4, dated 4-6-1974.

- (a) Class II (Development) Officers stationed at the following cities will receive City Compensatory Allowance of Rs. 20/- per month:
Bombay, Delhi, Kolkata, Madras, Ahmedabad, Bangalore, Poona, Hyderabad, Kanpur, Lucknow, Nagpur, Varanasi, Agra, Allahabad, Jaipur, Madurai, Patna, Indore, Jabalpur, Sholapur, Amritsar, Bhopal and Coimbatore.
- (b) Class III (Clerical and Supervisory) and Class IV (Subordinate) employee stationed at above centres will receive City Compensatory Allowance of Rs. 20/- per month.

F. HILL ALLOWANCE:

- (i) The Hill Allowance in respect of Classes III and IV employees governed under the scales of pay and allowances of the Corporation as given in Part A of Schedule II herein shall be as follows: -
For all hill stations of 4,000 feet and more above sea level and Mercara, the hill allowance shall be 15 per cent of the basic pay (including special pay) subject to a minimum of Rs. 20 and a maximum of Rs. 75 provided, however, that the amount of hill allowance currently paid shall stand protected till a stage is reached when the allowance as per the revised scale exceeds the current allowance.
- (ii) The Hill Allowance admissible to Class II (Development) Officers and Class I Officers at all hill stations at a height of 4,000 feet or more above sea level shall be 15 percent of pay plus special pay, (if any), subject to a minimum of Rs. 20/- and a maximum of Rs. 75/- per month.

The Amount of Hill Allowance currently paid shall, however, stand protected till a stage is reached when the allowance as per the revised scale exceeds the current allowance.

G. WATER SCARCITY ALLOWANCE:

Water Scarcity Allowance will be paid to Class II (Development) Officers, Class III (Clerical & Supervisory) and Class IV (Subordinate) employees at places where such allowance is paid by the Central or the State Governments at the same rate and for the same duration and on the same terms and conditions as may be prescribed by the Central State Government concerned.

⁴⁶ SCHEDULE III*Special Provisions relating to Class II – Development Officers (See Regulation 51 (1A)).****1. Definitions:**

In this Schedule, unless there is anything repugnant in the subject or context –

(a) “annual remuneration” means the basic pay, special pay, personal pay, dearness allowance, and all other allowances and non-profit sharing or ex-gratia bonus due or paid to a Development Officer during the appraisal year and includes the expenses payable or reimbursed to him or incurred by the Corporation during that year in respect of travelling, residential telephone and insurance premium and taxes on motor vehicles, but does not include incentive bonus and additional conveyance allowance paid to him;

(b) “appraisal date” means –

(i) In relation to a Development Officer other than an existing Development Officer:

- (A) In the first year of his appointment as Development Officer, the first day of the month following that in which he completes twelve months of service from the date of his appointment; and
- (B) In every subsequent year of his appointment, the first day of the month following that in which he completes twelve months of service from the last appraisal date;

(ii) In relation to an existing Development Officer:

(A) In the first year of his service from 1st April, 1979 –

- a. 1st April, 1979 if he completes twelve months of service as on 31st March, 1979 from the date on which he completes twelve months of service from the date of his appointment; and
- b. If otherwise, the first day of the month following that in which he so completes twelve months of service; and

(B) In every subsequent year of service, the first day of the month following that in which he completes twelve months of service from the last appraisal date;

Note: Unless otherwise specified, the first appraisal date in relation to a Development Officer other than an existing Development Officer shall mean the appraisal date ascertained in accordance with sub-item (A) of item i; and in relation to an existing Development Officer, it shall mean the appraisal date ascertained in accordance with sub-item (A) of item ii. The second and subsequent appraisal dates shall be construed accordingly.

(c) “appraisal year” means the period between two consecutive appraisal dates; and the period of twelve months of service proceeding the first appraisal date shall also be in appraisal year;

⁴⁶ * Notified in Gazette of India, Extraordinary Part III – Sec. 4, dated 22-4-1976.

- (d) "classification percentage" means the ratio which the remuneration paid in the classification year bears to the eligible premium of that year, and expressed in percentage;

Note: Remuneration paid in the classification year means the annual remuneration in respect of that year as defined in sub-clause (a); reference in that sub-clause to the appraisal year shall be construed as reference to the classification year.

- (e) "classification year" in relation to an existing Development Officer means the period of twelve months of service immediately preceding in twelve months of service immediately preceding the twelve months of service reckoned for the purpose of arriving the first appraisal date under this Schedule;
- (f) "Development Officer" means an employee belonging to Class II and includes in existing Development Officer;
- (g) "eligible premium" means such proportion as may be specified by the Corporation from time to time of the first year's premiums received by the Corporation in respect of the business secured by the agents in the organization of a Development Officer, which is adjusted in the relevant appraisal year;
- (h) "existing Development Officer" means a Development Officer in the service of the Corporation as on the date of publication of the Life Insurance Corporation of India (Staff) Sixth Amendment Regulations, 1978 in the Gazette of India;
- (i) "expense limit", in respect of an appraisal year in relation to a Development Officer working in an operational area specified in column (1) of the Table below, means the percentage of the eligible premium of that year as specified in the corresponding entry in column (2) thereof :-

TABLE

If the Development Office is working in operational area	Percentage of the eligible premium
(1)	(2)
A	22%
B	23%
C	24%
D	25%

Note: (1) The expense limit of a Development Officer for any appraisal year is expressed as a percentage of the eligible premium of that year; a

Development Officer is said to exceed the expense limit if his annual remuneration in that year is in excess of the expense limit; such excess or the ratio which such annual remuneration bears to the eligible premium of that year may also be expressed as a percentage of the eligible premium.

(2) In the case of an existing Development Officer the percentage specified in the above Table shall be increased by the appropriate transitional concession, if any, in respect of the appraisal year preceding the first and second appraisal dates and the expense limit shall be ascertained accordingly for these appraisal years.

(j) "gross yearly salary" means the aggregate of the monthly basic pay, special pay, personal pay, dearness allowance and all other allowances which may be allowed to a Development Officer for any succeeding year if the terms of his appointment are fulfilled, and shall include any non-profit sharing or ex-gratia bonus payable in that year and an estimate of the expenses that may be allowed during that year in respect of travelling, residential telephone and insurance premium and taxes on motor vehicles, but shall not include any incentive bonus or additional conveyance allowance that may accrue to him;

(k) "operational area" with reference to a Development Officer means the area in which he is posted to work as such development Officer and a Development Officer is said to be working in operational area ---

'A' if he is working in a City, urban agglomeration or 'Town with an ascertained population of more than 10 lakhs.

'B' if he is working in a City, Urban agglomeration of 'Town with an ascertained population of 4 lakh or above but not more than 10 lakhs.

'C' if he is working in a City, Urban agglomeration or Town (not being a rural area) with an ascertained population of less than 4 lakhs; and

'D' if he is working in a rural area.

Explanation: (1) For the purpose of this sub-clause "ascertained population" means the population as ascertained from the latest Census Report of the Government of India.

(2) A Development Officer is said to be working in a "rural area" if his headquarters is at a place with an ascertained population of 30,000 or less and his operational area has an ascertained population of not more than 60,000.

(l) "preceding year" or "relevant appraisal year" means the appraisal year immediately preceding the relevant appraisal date;

(m) "relevant appraisal date" means the appraisal date on which the performance of the Development Officer for the appraisal year immediately preceding that date is assessed for any purpose under this Schedule:

- (n) "service" means the period spent on duty as a development Officer and leave, including extraordinary leave which has been condoned under Regulation 69 (4);
- (o) "Succeeding year" means the period of twelve months commencing from the relevant appraisal date;
- (p) "transitional concession" means the concession applicable to an existing Development Officer whose classification percentage is higher than the expense limit percentage and such concession shall be computed as follows:
- (i) in the appraisal year preceding the first appraisal date:
The difference between 35 percent and expense limit percentage or two-thirds of the difference between expense limit percentage and classification percentage, whichever is less;
 - (ii) in the appraisal year preceding the second appraisal date:
 - (A) If the Development Officer is working in operational area A or B, the difference between 29 percent and expense limit percentage or one-third of the difference between expense limit percentage and classification percentage, whichever is less; or
 - (B) If the Development Officer is working in operational area C or D, the difference between 30 percent and expense limit percentage or one-third of the difference between expense limit percentage and classification percentage, whichever is less;
- Note: (1) For ascertaining the two-thirds or one-third of the difference between the expense limit percentage, and classification percentage, as the case may be, the result obtained shall be rounded off to the nearest integer.
- (2) For the purpose of this sub-clause, the expense limit percentage does not include the increase specified in the Note (2) to sub-clause (i) and the expense limit percentage means the percentage of the eligible premium specified in column (2) of the Table below the said sub-clause (i)

2. Increments:

(1) With effect from the first appraisal date under this Schedule increments shall ordinarily be drawn by a Development Officer as matter of course in accordance with Regulation 56:

Provided that his annual remuneration in the preceding year was not in excess of the expense limit:

Provided further that if his annual remuneration in the preceding year was in excess of the expense limit by not more than 2 percent of the eligible premium of that year he may be allowed to

draw the increment from the relevant appraisal date if his annual remuneration was not in excess of the expense limit in the appraisal year previous to the preceding year:

Note: This proviso shall not apply to an existing Development Officer for the grant of increment on the first appraisal date.

Provided also that where the annual remuneration of an existing development Officer is in excess of the expense limit in the appraisal year preceding the first appraisal date, he shall be allowed to draw the increment from the first appraisal date if only such excess is not more than 2 per cent of the eligible premium of that year and his gross yearly salary for the succeeding year after grant of such increment shall not exceed 35% of the eligible premium of the appraisal year preceding the first appraisal date.

Note: For the removal of doubt it is clarified that nothing contained in this clause shall apply in the case of Development Officer who has reached the maximum of the grade or in whose case efficiency bar operates.

(2) Notwithstanding anything contained in sub-clause (1), if on a representation received from any Development Officer, the Zonal Manager is satisfied that the Development Officer has exceeded the expense limit on account of reasons beyond his control, he may direct that the increment be granted from the relevant appraisal date.

(3) Where no increment is granted to a Development Officer on any appraisal date, such increment shall not be granted to him in any subsequent year.

3. Conveyance Allowance:

(1) Every Development Officer shall be entitled to such conveyance allowance as may be granted by the Corporation from time to time, and the payment thereof including conditions of eligibility and other matters, shall be regulated by instructions issued by the Chairman in that behalf:

Provided that if the annual remuneration of any Development Officer in any preceding year is in excess of the expense limit, the conveyance allowance admissible to him for the succeeding year shall be limited to one-half of the amount to which he may be otherwise entitled under the instructions.

(2) Notwithstanding anything contained in sub-clause (1), if on a representation received from a Development Officer, the Zonal Manager is satisfied that his annual remuneration in any preceding year was in excess of the expense limit for reasons beyond his control, he may allow the conveyance allowance for the succeeding year to such extent as he may think fit instead of limiting it to one-half.

(3) Where the conveyance allowance admissible to a Development Officer is reduced in respect of any appraisal year, the reduction in that year shall not be made good in the succeeding years but, he would only be entitled to full conveyance allowance, admissible to him under the rules for any succeeding year if his annual remuneration is not in excess of the expense limit in the preceding year.

4. Tenure

Subject to the provisions of this Schedule, a Development Officer shall hold office by the same tenure and in the same manner as any other class of employee in the Corporation.

Provided that his annual remuneration does not exceed the expense limit applicable to him:

Provided further that the services of a confirmed Development Officer shall not be terminated merely on the ground of poor business production unless, either his annual remuneration in any appraisal year exceeds 35% of the eligible premium of that year, or his basic pay cannot be fixed, in accordance with the provisions hereinafter contained at least at the minimum of the grade applicable to him.

5. Opportunity to conform to the expense limit:

(1) Where the annual remuneration of any Development Officer in the preceding year or years is in excess of the expense limit in the manner envisaged in the Table below, his service, shall not be terminated merely on that ground but his basic pay for the succeeding year shall be reduced as provided in the said table from the relevant appraisal date thereby affording him opportunity to conform to the expense limit:

TABLE

Sl. No.	Annual Remuneration in Excess of the expense limit	<i>Reduction in basic pay where the annual remuneration is in excess of the expense limit in the appraisal year preceding the relevant appraisal date</i>				
		One the first Occasion	One the second successive occasion	Third successive occasion	Fourth Successive Occasion	Fifth Subsequent successive occasions
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	By not more than 2% of the eligible premium	--	--	One stage in the grade	Two stages in the grade	Three stages in the grade
2.	By more than 2% but not more than 4% of the eligible premium	---	One stage in the grade	Two stages in the grade	Three stages in the grade	-do-
3.	By more than 4% but not more than 6% of the eligible premium provided that the annual remuneration did not exceed 35% of the eligible premium of that year.	One stage in the grade	Two stages in the grade	Three stages in the grade	-do-	-do-

4.	By more than 6% of the eligible premium provided that the annual remuneration did not exceed 35% of the eligible premium of that year	Two stages in the grade	Three stages in the grade	-do-	-do-	-do-

Explanations: - (i) For the purpose of this Table, the annual remuneration of a Development Officer shall be deemed to be in excess of the expense limit on a successive occasion if such remuneration exceeds the expense limit in two consecutive appraisal years even though the excess percentage over the expense limit may vary; an appraisal year in which the Development Officer exceeds the expense limit but there is no reduction in basic pay or where there is reduction in basic pay under sub-clause (2) shall also be reckoned for ascertaining whether the expense limit is exceeded on successive occasion shall correspond to the excess of the expense limit in the appraisal year, preceding the relevant appraisal date.

Illustration: A Development Officer's annual remuneration in the appraisal year preceding the first appraisal date was in excess of the expense limit by not more than 2% and consequently there was no reduction in his basic pay for the succeeding year. In such succeeding year, the annual remuneration was 3% in excess of the expense limit. On the second appraisal date, his basic pay shall be reduced by one stage in the grade.

(ii) The provisions of this sub-clause shall be repeatedly applied if, after conforming to the expense limit, the Development Officer exceeds the expense limit at a later date. The first occasion and successive occasions shall be ascertained afresh in such a case as from such later date.

(2) Where the annual remuneration of a Development Officer in any preceding year (hereinafter also referred to as the relevant year in this sub-clause) exceeds 35% of the eligible premium of that year, his services shall be liable to be terminated:

Provided that his services may be continued on compassionate grounds after reducing his basic pay by three stages in the grade ---

- (a) If the annual remuneration in the relevant year does not exceed 50% of the eligible premium of that year; or
- (b) If the annual remuneration in the relevant year exceeds 50% but the aggregate of the annual remuneration in the relevant year and the two appraisal year immediately preceding the relevant year does not exceed 50% of the aggregate of the eligible premium in those three years.

Provided further that, in the case of an existing Development Officer, if his annual remuneration in the appraisal year preceding the first appraisal date is in excess of the expense limit applicable to him in that year by not more than 4% of the eligible premium, or if his annual remuneration in the appraisal

year preceding the second appraisal date is in excess of the expense limit applicable to him in that year by not more than 2% of the eligible premium, his services shall not be liable to be terminated nor shall his basic pay be reduced on the ground that his annual remuneration has exceeded 35% of the eligible premium in either of those appraisal years.

Note: (i) For the purpose of affording relief under the first proviso, an existing Development Officer shall be entitled to have the classification year and the year immediately previous thereto treated as two appraisal years immediately preceding the preceding year in respect of the first appraisal date; and he shall be entitled to have the classification year included as an appraisal year in respect of second appraisal date. Thereafter the three appraisal years shall consist of the three appraisal years immediately preceding the relevant appraisal date.

(ii) For the purpose of ascertaining whether the aggregate of the annual remuneration in the relevant year and the two appraisal years immediately preceding the relevant year does or does not exceed 50% of the aggregate of the eligible premium in those years, the actual eligible premium and the annual remuneration in each of those years shall be taken into account, irrespective of whether appropriate action has been taken in accordance with this Schedule in respect of any such year or the fact that the development Officer has exceeded the expense limit has been condoned or otherwise not taken into account under this Schedule in any such year.

(3) if, as a consequence of the application of the provisions contained in sub-clause (1) or sub-clause (2), the basic pay arrived at falls below the minimum of the grade applicable to the Development Officer, his basic pay shall be fixed at such minimum:

Provided that the benefit of this sub-clause shall not be allowed more than once during the entire service of a Development Officer.

(4) Where the basic pay of a Development Officer is reduced or fixed under the foregoing sub-clause, he shall be allowed only such allowances and other benefits as are appropriate to that basic pay; and where his conveyance allowance has been reduced to one-half in accordance with clause 3, he shall only be entitled to one-half of the conveyance allowance appropriate to the revised basic pay; and there shall be no protection of total remuneration either by granting a personal allowance or otherwise

(5) The competent authority to implement the provisions of the foregoing sub-clauses shall be the appointing authority which shall do so, as soon as may be, after the expiry of the relevant appraisal year:

Provided that the Development Officer concerned shall be given an opportunity to make a representation in regard to his case.

(6) If the representation received under sub-clause (5) discloses any factual inaccuracies in the computation of eligible premium or other figures, the competent authority shall revise his decision to the extent it is warranted by the revised figures and pass appropriate orders disposing of the representation; and if the representation discloses any cause beyond the control of the Development Officer, such as accident or sickness, to justify relaxation of the expense limit, and he pleads that the reduction in basic pay should not be effected on that ground, the competent authority shall forward the representation to the Zonal Manager, for decision.

(7) If the Zonal manager is satisfied that there is any merit in the representation, he may consider the circumstances of the case and pass such orders as he may think fit.

(8) A Development Officer whose representation has been rejected by the Zonal Manager may submit a memorial to the Chairman in respect of that matter.

(9) Nothing contained in this clause shall affect the operation of clause 2 or clause 3.

6. Termination of service in certain cases: -

(1) The Zonal Manager may terminate the service of a Development Officer on giving him three months' notice or salary in lieu thereof if his annual remuneration in any preceding year is in excess of the expenses limit and if no further opportunity can be given to him to conform to the expense limit in accordance with the foregoing provisions:

Provided that the Development Officer concerned shall be given an opportunity to show cause against the proposed termination of his service.

(2) An appeal against an order passed under sub-clause (1) shall lie to the Managing Directory and the provisions of Regulations 41, 42, 43, 44 and 45 shall, so far as may be, apply to any such appeal.

(3) In the case of an appeal under sub-clause (2) the Managing Director shall consider the records of the case and pass such orders as he thinks fit.

7. Efficiency Bar :--

(1) Where in an incremental scale there is an efficiency bar, a Development Officer shall not be certified fit to draw increments above that bar on or after 1st April, 1979 unless his eligible premium in the preceding year was equal to or more than five times his annual remuneration and the aggregate of the eligible premium in the three appraisal years immediately preceding the relevant appraisal date was equal to or more than five times the aggregate of his annual remuneration for those three years.

(2) Notwithstanding anything contained in the proviso to sub-regulation (3) of Regulation 56, on each occasion on which an employee is allowed to cross an efficiency bar which has previously been

enforced against him, he shall be allowed only one increment on removal of the bar and further the increment granted on such removal shall have no retrospective effect.

(3) Where, as a result of reduction in basic pay for any reason whatever, the basic pay of a Development Officer has been fixed at a stage below the efficiency bar which he has been allowed to cross earlier, he shall be certified fit to draw increments above the bar only if he satisfied the conditions stipulated in sub-clause (1) on the second occasion also.

Note: For the purpose of this clause, the classification year and the year immediately previous thereto shall be treated as two appraisal years immediately preceding the preceding year in respect of the first appraisal date of an existing Development Officer; and the classification year shall be treated as an appraisal year in respect of the second appraisal date.

8. Incentive: -

(1) Incentive bonus under any scheme approved by the Corporation may be allowed to a Development Officer for a preceding year in respect of appraisal dates falling due on or after 1st January 1978 if his annual remuneration in the relevant appraisal year does not exceed 20 per cent of the eligible premium of that year.

(2) A Development Officer may be allowed additional conveyance allowance in accordance with such scheme as the Corporation may approve from time to time.

9. Promotion of Development Officers: -

(1) Any Development Officer considered suitable may be promoted as Assistant Branch Manager or Assistant Administrative Officer.

(2) Any Development Officer whose services are liable to be terminated under this Schedule, may, with his consent, be appointed to do administrative work in Class III, on such terms as may be decided by the Corporation.

10. Application of the Provisions of the Previous Schedule:-

(1) Action for re-fixation of basic pay or termination, if pending, shall not be continued in terms of Schedule III incorporated by the Life Insurance Corporation of India (Staff) Amendment Regulations, 1976, (hereinafter referred to as the previous Schedule) nor shall fresh action be taken under the previous Schedule for re-fixation or termination on the basis of the performance for the period between the date of the previous Schedule and the date on which this Schedule shall become applicable.

(2) Increments due during the period falling between the date of the previous Schedule and the date on which this schedule shall become applicable, may be granted or efficiency bar operative during the said period may be removed in accordance with the provisions obtaining prior to the date of the previous Schedule.

11. Saving of other Provisions: --

Nothing contained in this Schedule shall be deemed to affect the right of the competent authority to discharge, retire, or determine the services of a Development Officer in accordance with the relevant regulation, or to affect the right of the disciplinary authority to impose any penalty on him under Regulation 39 on any of the ground specified therein."

SCHEDULE IV**Competent Authorities**

Reg. No.	Nature of power	Authority	Extent of power
†10	Waiver of age limit for appointment.	Appointment Authority	Full
* 47 11	To grand advance increments	D (P)	In respect of employees belonging to Classes II, III & IV.
		Chairman	In respect of appointments in Class I in the cadres of AAO / ABM and equivalent cadre.
		Corporation	In other cases
* 16 (1)	To extent the period of probation	Appointing Authority.	Full
		Chairman	In respect of all employees of the cadre of AO and above. Full
* 16 (2)	To revert during the period of probation	Appointing Authority	Full
** 17	To appoint an employee to officiate in a higher post	Appointing Authority	
		Chairman in respect of posts for which the Corporation of Executive Committee is the appointing authority	Full

⁴⁷ *Notified in Gazette of India, Part III – Sec. 4, dated 7-8-1971

† Notified in Gazette of India, Part III – Sec. 4, dated 23-1-1971

** Notified in Gazette of India, Part III – Sec. 4, dated 16-12-1972

Reg. No.	Nature of power	Authority	Extent of power
		ZM/D(P)/ C (A & I) in respect of posts for which the Chairman or the M.D. is the appointing authority.	If the period of officiating arrangement is not more than three months.
18 (1)	To accept notice from an employee about his intension to leave the service and to waive the notice period in full or in part	Appointing Authority	Full
* ⁴⁸ 19	To direct an employee to retire on completion of 55 years of age or 50 years of age, as the case may be.	M.D.	In respect of employees belonging to Classes II, III & IV and employees in Class I in the cadres of AAO / ABM and AO / BM and equivalent cadres.
		Appointing Authority	In other cases.
	** To refuse leave preparatory to retirement.	ZM / D(P) / C (A & I)	In respect of Class I Officers of the rank of BM / AO and below and employees belonging to Classes II, III & IV.
		Chairman	Other Class I Officers.
		D (P) duly authorized by Chairman	In respect of Officers below the rank of ZM
** 23 (1)	To allow an employee to give evidence in connection with an enquiry conducted by any person, committee, or authority.	MD.	Full
28	To allow an employee to seek outside employment.	Appointing Authority	Full
29	To allow an employee to undertake part-time work and to determine the amount to be paid to the Corporation.	DM incharge of the Division / Dy. Secy (A & I)	In respect of employees in the cadres of ADM & below.

⁴⁸ * Notified in Gazette of India, Part III – Sec. 4, dated 21-7-1977.

** Notified in Gazette of India, Part III – Sec. 4, dated 16-12-1972

Reg. No.	Nature of power	Authority	Extent of power
		D (P) / D (A & I)	In respect of employee in the Central Office / Internal Audit and Inspection Department upto and including the rank of DZM.
		Chairman	In respect of Officers of the rank of ZM / ED and MD.
30 (1)	To allow an employee to remain absent.	Immediate superior Class I Officer	Full
	To dispense with the medical certificate	Authority empowered to grant sick leave under Regulation 61.	Full
30 (2)	To take disciplinary action for unauthorized absence or for overstayal of leave and/ or sanction leave cover the absence or overstayal.	Disciplinary authorities prescribed in Schedule I.	Full
30 (3)	To forefeet leave for late attendance	Immediate superior Class I Officer	Full
	To condone late attendance.	- do -	Upto two days in month.
31	To allow an employee to absent himself from station.	- do -	Full
34 (1)	To allow an employee to lend to a person possessing land or valuable property within the local limits of authority on interest.	Appointing Authority.	Full
34 (2)	To allow an employee to borrow money from a person with in the local limits of authority.	Appointing Authority.	Full
35	To receive statement of debt from an employee	Officer-in-Charge	Full
36 (1)	To suspend	Appointing Authority	Full
		Officer-in-charge other than the Appointing Authority.	In exceptional circumstances for reasons to be recorded in writing.

Reg. No.	Nature of power	Authority	Extent of power
56 (3)	To allow an employee to cross Efficiency Bar.	Appointing Authority	Full
56 (4)	To grant Advance or special or temporary increments.	Chairman	Full
61, 65, 66 & 68	To Sanction Leave;		
	Casual Leave:	Immediate superior Class I Officer	For all
	* Privilege leave, Sick leave and Maternity leave	Class I Officers duly authorized by the Officer-in-Charge	In respect of employees belonging to Classes II, III and IV.
	* ⁴⁹ Quarantine leave, Extraordinary leave and Communication of leave.	An Officer not below the rank of Branch manager or Administrative Officer duly authorized by the Officer-in-Charge.	In respect of employees belonging to Classes II, III and IV.
	Privilege leave, Sick leave Maternity leave, Quarantine leave and Extraordinary leave and Communication of Leave.	Officer-in-Charge not below the rank of ADM or an officer not below the rank of ADM duly authorized by the officer-in-charge.	In respect of Class I Officers in the cadres of AO / BM, AAO/ ABM and equivalent cadres
		Officer-in-charge not below the rank of DM / Dy. Secy. (A & I) or an officer not below the rank of DM / Dy. Secy. (A & I) duly authorized by ZM / D (P) / C (A & I)	In respect of Class I Officers in the cadres of ADM/ Sr. BM and equivalent cadres.
		ZM / D (P) / C (A & I)	In respect of other Class I Officers below the rank of ZM.
		Chairman	In respect of MDs, EDs, ZMs and C (A & I).

⁴⁹ * Notified in Gazette of India, Part III - Sec. 4, dated 7-8-1971.

Reg. No.	Nature of power	Authority	Extent of power
		Corporation	In respect of Chairman.
	Extra-ordinary leave under special circumstances.	ZM / D(P) / C (A & I)	In respect of employees belonging to Classes II, III and IV and Class I Officers in the cadres of ADM / Sr. BM and equivalent cadres and other Class I Officers of lower rank
		Chairman	For other Class I Officers.
	To allow an employee to return from leave before the expiry of the leave.	Authorities empowered to grant leave.	Full
	To recall an employee from leave	Authorities empowered to grant leave.	Full
	To as an employee to produce medical certificate even when leave was not granted on medical certificate but was availed on grounds of health.	- do -	Full
	To direct to treat the period of overstay as leave other than extraordinary leave	- do -	Full
	To grant leave to an employee during the pendency of disciplinary proceedings against him.	- do -	Full
* ⁵⁰ 64.	To grant special sick leave to employees suffering from any of the five major diseases of cancer, leprosy, T.B., poliomyelitis and mental diseases.	Officer-in-charge not below the rank of DM / Dy.Secy. (A & I) or an officer not below the rank of DM/ Dy. Secy. (A & I) duly authorized by ZM / D (P) / C (A & I)	In respect of Classes III & IV employees.

⁵⁰ * Notified in Gazette of India, Part III - Sec. 4, dated 7-8-1971.

Reg. No.	Nature of power	Authority	Extent of power
		Appointing Authority or Chairman in case of posts for which the appointing authority is the Corporation or the Executive Committee.	In respect of Classes I and II Officers.
* ⁵¹ 69 (4)	To allow the period of extraordinary leave to count for increments.	ZM/ C (A & I)	In respect of employees belonging to Classes II, III and IV and Class I Officers in the cadres of AAO / ABM and equivalent cadres in the Zone / Internal Audit & Inspection Deptt. When extraordinary leave has been taken on account of illness supported by medical certificate.
		D (P)	In respect of employees below the rank of ZM not covered by above.
69 (4)	Contd.	MD	Other cases.
70	To allow an employee on leave to draw compensatory allowance either in part or in full.	Authorities empowered under Regulation 61.	According to the orders that may be laid down from time to time.
** 73	To curtail joining time and to grant special leave to the extent of joining time curtailed.	ZM / D (P)/ C (A & I)	In respect of Class I Officers.
		Authorities empowered to sanction transfer.	In respect of others.
80	Transfer of Employee:		
	♠A. To transfer employees belonging to Classes II, III & IV working in : - (i) Central Office	D (P)	Full

⁵¹ ** Notified in Gazette of India, Part III - Sec. 4, dated 16-12-1972.

♠ Notified in Gazette of India, Part III - Sec. 4. Dated 7-8-1971

Reg. No.	Nature of power	Authority	Extent of power
	(ii) Internal Audit & Inspection Department.	Dy. Secy. (A & I)	If the transfers are within the zone.
		C (A & I)	Full
	(iii) Zones	ZM	If the transfers are within the zone.
		DM	If transfers are within the division.
		D (P)	If the transfers are from one zone to another, from zones to Central Office or <i>vice-versa</i> and from India to a foreign country of <i>vice-versa</i> .
(b)	Appointed to posts in the cadres of AO / BM and equivalent cadres working in :-		
	(i) Central Office	D (P)	Full
	(ii) Internal Audit & Inspection Department	Dy. Secy. (A & I)	If the transfers are within the zone.
	(iii) Zones.	ZM	If the transfers are within the zone.
		D (P)	If the transfers are from one zone to another, from zones to Central Office or <i>vice-versa</i> and from India to a foreign country or <i>vice-versa</i> .
(c)	Appointed to posts in the cadres of ADM / Sr. BM and equivalent cadres	MD	Full
(d)	Appointed to posts in the cadres of DM, DZM / Sr. DM and equivalent cadres	Chairman	Full

Reg. No.	Nature of power	Authority	Extent of power
(e)	Appointed to posts in the cadre of ED / ZM and equivalent cadres and above.	Corporation. Chairman may exercise the power in an emergency.	Full

N.B. Office-in-charge means the officer who is in charge of the office in which the employee is working.

⁵² SCHEDULE V*Travelling & Daily Allowances (See Reg. 79)****1. TOURS:**

(1) Employees of the Corporation proceeding on tour in India shall be entitled to travel by train in the class of accommodation as given below, if the places are connected by train: -

Employee belonging to	Class of Accommodation Train
(i) Class I:	
(a) ZMs and above	ACC
(b) Dy. ZMs / Sr. DMs and DMs drawing a basic pay of Rs. 1700/- and above	I
(c) Others Officers excluding AAOs and ABMs	I
(d) AAOs and ABMs	I
** (ii) Class II:	
(a) Grade I Development Officers with a basic pay of Rs. 350/- p.m. or over:	I Class
(b) Grade II Development officers and Grade I Development officers with a basic pay of less than Rs. 350/- p.m.:	II Class (New) with Sleeper berth for night journeys.
** (iii) Class III:	
(a) All Class III employees with a basic pay of Rs. 350/- p.m. and above.....	I Class
(b) All Class III employees with a basic pay of less than Rs. 350/- p.m.	II Class (New) with sleeper berth for night journeys.
** (iv) All Class IV employees	II Class (New) with sleeper berth for night journeys.

(2) Notwithstanding anything contained in sub-clause (1) officers of the rank of Divisional Manager and above drawing a basic pay of Rs. 1,700 or more may travel by air by ordinary / economy class.

Provided that the Managing Director, the Executive Director or the Zonal Manager or the Chief (A & I) may permit any other employee to travel by air, if necessary.

(3) Where the places are connected only by steamer, an employee may travel by steamer, by first class if he is an employee in Class I of the rank of Administrative Officer or above; by II Class if he is any other employee in Class I, II or III and as deck passenger if he is an employee in Class IV.

⁵² * Notified in Gazette of India, Part III – Sec. 4, dated 7-8-1971.

** Notified in Gazette of India, Part III – Sec. 4, dated 31-5-1975.

(4) Where the places are connected not by train but by road, an employee will be entitled to travel by road ---

- (a) If he is an officer in Class I, by I Class in bus wherever it is provided or by taking a single seat in taxi where such facilities are available;
- (b) If he is a Development Officer, by bus, and where the bus has two classes of accommodation, by the upper class;
- (c) If he is an employee in Class III or IV, by bus, and where the bus has two classes of accommodation, by the lower class.

(5) The Managing Director or the Executive Director or the Zonal Manager or Chief (A & I) may allow an employee to travel by a class higher than that by which he is entitled to travel by train if the circumstances of the case so require. In every such case the reasons will be recorded in writing.

*⁵³(6) Notwithstanding anything contained in the item (ii) (b) of Sub-Clause 1 where the journey undertaken by a Development Officer on duty involves night travel, travel by I Class will be admissible for the entire journey.

* (7) In respect of employee in Class III travelling on duty whose basic pay is less than Rs. 350/- p.m. where the journey undertaken involves night travel, travel by I Class will be admissible for the entire journey. Where the journey is required to be made by any Class III employees on duty by steamer / bus and where only two classes upper and lower are available, journey will be permitted by the upper class.

**** 2. DAILY ALLOWANCE AND INCIDENTALS:**

- (1) Daily allowance at the following rates will be payable to employees on tour on official business: -

Rank	Rate
Subordinate Staff	10.00
Other employees	
Drawing pay upto Rs. 340/-	15.00
Drawing pay between Rs. 341/- and Rs. 800/-	20.00
Drawing pay between Rs. 801/- and Rs. 1500/-	25.00
Drawing pay above Rs. 1500/-	30.00

Note: "Pay" means basic pay and shall include special pay.

- (2) For employees visiting Bombay, Calcutta, Delhi or Madras on tour the daily allowance admissible for the period of their halt at these places shall be at the rates set out above increased by Rs. 5/-
- (3) For employees visiting the following cities, the above rate of daily allowance will be increased by Rs. 3/- for the period of their halt at the places:

⁵³ * Notified in Gazette of India, Part III – Sec. 4, dated 31-5-1975.

** Notified in Gazette of India, Part III – Sec. 4, dated 28-8-1976.

1. Ahmedabad	6. Lucknow	11. Shillong
2. Bangalore	7. Nagpur	12. Simla
3. Darjeeling	8. Nainital	13. Srinagar
4. Hyderabad (Dn)	9. Ootacamund	
5. Kanpur	10. Poona	

(3A) In cases where employees belonging to Class I stay in hotels in the cities specified herein, actual expenses incurred by them on board and lodging plus 20% thereof towards out of pocket expenses may be reimbursed subject to the provision contained in this sub-clause.

		<i>Limits per day (inclusive of 20% of actual expenses towards out of pocket expenses) in respect of tours to</i>		
		Class A Cities	Class B Cities	Class C Cities
		Rs.	Rs.	Rs.
(a)	Officers of the rank of Senior Divisional Manager / Dy. Zonal manager and above	150	125	100
(b)	Other officers drawing basic pay:			
	Upto Rs. 1000/-	50	40	30
	Between Rs. 1001/- and Rs. 1299/-	60	50	40
	Rs. 1300/- and above	100	75	55

- Note: -
- (1) The Provisions of this clause shall not apply to employees other than those belonging to Class I.
 - (2) Reimbursement for stay in hotel as indicated above will be allowed to a Class I Officer in the specified cities only when the facility of Guest House accommodation provided by the Corporation is not available at the place. Whenever a Class I Officer stays in a hotel in the cities specified and claims reimbursement under this sub-clause, he shall furnish a certificate to the effect that no accommodation was available in the Guest Houses.
 - (3) For the Purpose of this sub – paragraph:
 - (i) Class A cities shall mean, the cities mentioned in sub-clause (2)
 - (ii) Class B cities shall mean the places mentioned in sub-clause (3)
 - (iii) Class C cities shall mean the following places namely: -

Agra, Ajmer, Allahabad, Amritsar, Asansol, Baroda, Bhubaneswar, Bokaro, Chandigarh, Cochin, Coimbatore, Cuttack, Dhnbad, Dharwad, Durgapur, Gangtok, Gauhati, Gwalior, Indore, Jabalpur, Jaipur, Jalpaiguri, Jamshedpur, Jullundur, Kalimpong, Kozhikode, Ludhiana, Machilipatnam, Madurai, Meerut, Muzaffarpur, Nasik, Patna, Raipur, Rajkot, Ranchi, Rourkela, Salem, Satara, Sholapur, Siliguri, Surat, Thanjavur, Tiruchirapalli, Trivandrum, Udupi, Varanasi and Visakhapatnam.

- (4) In case where reimbursement under this sub-clause is allowed, no daily allowance as specified under sub-clauses (1), (2) and (3) above shall be admissible.

(3B) Notwithstanding anything contained in sub-clause (3A) if the Managing Directors while on tour prefer to stay in a hotel at any place, the actual expenses may be reimbursed to them for stay in a single room inclusive of diet only. Where reimbursement under sub-clause is allowed, no claim shall be admissible under sub-clause (1), (2), (3) or (3A).

(4) Daily allowance at the full rates will be payable for first 30 days of halt at any one station. Daily allowance at half rates will be paid for a further period not exceeding 60 days subject to special sanction by Zonal Manager, Chief (A&I) or Director (Personnel). The same applies to enhanced daily allowance applicable to the cities mentioned in sub-clauses (2) and (3) above.

Note: Relaxation of provisions in this sub-paragraph may be permitted in individual cases under special circumstances by director (Personal) if so authorized by the Chairman.

(5) *Incidentals*: An employee on tour shall be entitled to actual expenses subject to a maximum of an amount equal to daily allowance for half a day for each completed journey.

3. TRANSFERS

(1) Employees on transfer from one place in India to another are also entitled to travel in the same class by train or steamer as provided in sub-clause (1) or sub-clause (3) of Clause 1 above.

(2) Families of employees on such transfer will also be entitled to travel in the same class by train or steamer as the employees themselves.

(3) Air travel on transfer will be allowed only in the case of employees not below the rank of Zonal Manager and their families.

(4) Where an employee belonging to Class III or IV is transferred outside the Zone where he is working and he has to make another trip to his original place for bringing the members of his family, he will be allowed two extra fares, that is one fare each way for this purpose.

(5) Incidental: (a) Class I Officers: A Class I Officers travelling on transfer within India shall be entitled to the following incidentals:

<i>Post held by the officer at the place from which he is transferred</i>	<i>Distance in kilometers between the old and new headquarters</i>		
	<i>Upto 250</i>	<i>251 – 750</i>	<i>Above 750</i>
	<i>Rs.</i>	<i>Rs.</i>	<i>Rs.</i>
Class I Officers in posts for which minimum of grade is Rs. 770/- or less	150	225	300
Class I Officers in posts for which the minimum of the grade is more than Rs. 770/- /-but less than Rs. 1,600	175	250	325
Class I Officers in post for which the minimum of the grade in Rs. 1,600/- and over	200	275	350

(b) Other classes of employees: An employee travelling on transfer by rail is entitled to draw two fares of the class by which he is entitled to travel. An employee travelling by air is entitled to draw the incidentals which would have been admissible to him had he performed the journey by rail. An employee travelling by steamer shall be entitled to draw twice the lower fare (where the Steamship Company charges lower and higher fares-without or with diet or otherwise) of the class by which he is entitled to travel. An employee travelling by road will be entitled to incidentals to which he would have been entitled had he performed the journey by train.

(c) In case of transfer from India to a foreign territory and vice versa half a month's basic pay will be allowed as incidentals subject to a minimum of Rs.250/- an also one fare of the class by which he is entitled to travel for each journey required to be performed by train. For detentions at intermediate points for taking the connecting place steamer or train as the case may be, daily allowance at the usual rate will be payable for the employee and his family subject to a maximum of seven days for every completed journey.

4. TIME LIMIT FOR THE FAMILY TO JOIN THE EMPLOYEE:

To enable an employee to claim the fares for the members of the family and the dependents, they may follow him within six months from the date of his handing over charge at his old station, or precede him to his new headquarters any time after the order of transfer has been issued. The cost of transporting personal belongings will also be allowed only if it is completed within this period. The Zonal Manager or Director (Personnel) or Chief (A&I) may relax the time limit upto nine months. Further relaxation in the time limit may be permitted by Director (Personnel), if specifically authorized by Managing Director in this behalf.

5. EMPLOYEES RECALLED FROM LEAVE:

An employee recalled from leave will be entitled to draw travelling allowance for the journey from the place of leave to the headquarters provided the period by which leave is curtailed is not less than 14 days, but no halting allowance will be admissible for the journey period.

6. RELAXATION:

The Managing Director may permit relaxation of the foregoing rules in individual cases under special circumstances.

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*LIFE INSURANCE
CORPORATION OF INDIA*



**(AGENTS) REGULATIONS ,
1972**

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LIFE INSURANCE CORPORATION OF INDIA

(AGENTS) REGULATIONS, 1972

Whereas it is necessary to frame regulations defining the method of recruitment of agents of the Life Insurance Corporation of India and the terms and conditions of their appointment and work, the Corporation, in exercise of the powers vested in it under section 49 of the Life Insurance Corporation Act, 1956 (31 of 1956) and with the previous approval of the Central Government, hereby makes the following regulations, namely: -

1. Short title and Commencement:

(1) These regulations may be called the Life Insurance Corporation of India (Agents) Regulations, 1972.

(2) They shall come into force on the date of their publication in the Gazette of India.

2. Application:

These regulations shall apply to all agents appointed in India by the Corporation in respect of life insurance business.

3. Definitions:

(1) In these regulations, unless the context otherwise requires,

a) "absorbed agent" means an agent who is deemed to have been appointed under sub-regulation (4) of regulation 4:

b) "agent" means a person who has been appointed under regulation 4 of these regulations and includes an absorbed agent:

c) "agency year":

(i) In relation to an agent other than an absorbed agent means:

(A) In the first year of his appointment, the period from the date of his appointment to the end of the month in which he completes twelve months as an agent (herein after referred to as the first agency year of such agent), and

(B) In the subsequent years of his appointment, every successive period of twelve months following the completion of the first agency year; and

(ii) In relation to an absorbed agent, means:

(A) the period of twelve months from the date following the date on which he had completed the last year of his agency before the published day (hereinafter referred to as the first agency year of such agent) and

(B) in the subsequent years of his appointment every successive period of twelve months following the completion of the first agency year:

Provided that in the case of an agent on whom a notice has been served under sub-regulation (5) of regulation 4, subsequent agency years shall be taken to mean every successive period of twelve months computed from the date mentioned in the notice

- d) "ascertained", with reference to population, means ascertained from the latest Census Report of the Government of India:
- e) "Competent authority" means the authority specified in Column. (3) of Schedule I to discharge the functions mentioned in the corresponding entries in column (2) thereof;
- f) "Insurance Act" means the Insurance Act, 1938 (4 of 1938)
- g) "modified previous guarantee", in relation to an absorbed agent, means the following completed business in an agency year:

(i) If he was working in a city or town group with an ascertained population of one lakh or above	Rs. 40,000 sum assured under life insurance policies on six different lives
(ii) If he was working in any other place	Rs. 20,000 sum assured under life insurance policies on six different lives.

- h) "previous guarantee" in relation to an absorbed agent, means the following completed business in an agency year:

(i) If he was working in a city or town group with an ascertained population of one lakh or above.	Rs. 40,000 sum assured under life insurance policies on six different lives, or general insurance premium income of Rs. 4,800, or combination of life insurance business and general insurance business deemed equivalent under the letter of appointment issued before the published day.
(ii) If he was working in any other place.	Rs. 20,000 sum assured under life insurance policies on six different lives or general insurance premium income of Rs. 2,400, or combination of life insurance business and general insurance business deemed equivalent under the letter of appointment issued before the published day.

- i) "Published day" means the date on which these regulations are published in the Gazette of India.
- j) "Schedule" means a Schedule appended to these regulations.

k) "Specified" means specified by the Managing Director by instructions or directions issued under regulation 25.

(2) All words and expressions used herein and not defined herein but defined either in the Insurance Act or in the Life Insurance Corporation Act, 1956 (31 of 1956) or in the Life Insurance Corporation Regulations, 1959, shall have the meanings respectively assigned to them in the relevant Act or Regulations.

4. Appointment of agents:

(1) Agents may be appointed in any place for the purpose of soliciting of procuring life insurance business for the Corporation.

(2) All appointments shall be made by the competent authority after interviewing the candidates and satisfying itself about their suitability.

(3) In making the appointments, the competent Authority shall be guided by such rules of procedure as may be specified from time to time.

(4) On and from the published day, every person, who was immediately before that day acting on behalf of the Corporation as an insurance agent as defined in the Insurance Act in respect of its life insurance business, shall be deemed to be an agent appointed and confirmed under these regulations from such day:

Provided that for the purpose of computing the period of his work as an agent and any benefit under these regulations, the period during which he was continually acting on behalf of the Corporation as an insurance agent immediately before the published day (excluding any period prior to the 1st September, 1956) shall be taken into account and for the purpose of ascertaining his business in force of the renewal premium income in respect of such business on any date. The business completed by him in the period during which he was continually acting as an insurance agent immediately before the published day shall be taken into account:

Provided further that if any such person within ninety days from the published day, by notice in writing to the Divisional Manager, intimated his intention to discontinue his agency, he shall not be deemed to be an agent under these regulations, but his agency shall stand terminated at the expiry of a period of thirty days from the date of receipt of such notice by the Divisional Manager, and the provisions of the letter of appointment by which he was governed immediately before the published day shall apply as regards the settlement of his account and the benefits admissible to him on such termination.

(5) Notwithstanding anything contained in the foregoing sub-regulations, the competent authority may, by notice in writing to an agent, direct that his agency year shall be every successive period of twelve months from the date mentioned in the notice:

Provided that the date so mentioned in the notice shall be the first of a calendar month.

5. Qualification of Agents:

- (1) No person shall be appointed as an agent:
 - (a) if he has not completed 18 years of age; or
 - (b) if he does not possess a valid licence issued under section 42 of the Insurance Act; or
 - (c) if he has not passed the matriculation examination, or an examination recognised as equivalent thereto by the Corporation, in case he is to be appointed in the town or a city with an ascertained population of one lakh or above, and at least 8th standard in case he is to be appointed at any other place:

Provided that the competent authority may, for reasons to be recorded in writing, relax the requirement specified in the clause.

(2) Subject to such conditions as may be specified, any society, association, panchayat or other body may be appointed as an agent if it is licensed to act as an insurance agent under section 42 of the Insurance Act and the provisions of these regulations shall, as far as may be, apply to such agent as they apply to an agent who is an individual.

(3) Subject to the provisions of these regulations and regulation 29 of the Life Insurance Corporation of India (Staff) Regulations, 1960, an employee of the Corporation may be appointed as an agent.

6. Training and tests:

Every agent appointed these regulations shall unless exempted under sub-regulation (3) of regulation 7, undergo such training and pass such tests as may be specified and every absorbed agent shall, if called upon to do so, undergo the aforesaid training and tests.

7. Probation:

(1) Subject to the provisions of sub-regulation (3) and sub-regulation (4), an agent appointed on or after the published day shall be on probation initially for a period of 6 months from the date of his appointment and thereafter until he is confirmed in accordance with the provisions hereinafter contained.

(2) The competent authority may confirm the agent in his appointment if it is satisfied that he has successfully undergone the specified training and passed the specified tests and if his work, record and conduct have been satisfactory.

(3) The competent authority may:

- a) reduce the period of probation of an agent and confirm him in his appointment if he has successfully undergone the specified training and passed the specified tests;
- b) If it is satisfied that such training or tests need not be insisted upon for confirming him in his appointment waive the period of probation and in that case it shall record in writing the reasons for such waiver.

(4) The period of probation of an agent shall, in no cases, exceed three agency years, and unless he is confirmed within the aforesaid period his appointment shall be terminated.

(5) So long as an agent is on probation, the competent authority may terminate his appointment without any notice and without assigning any reason therefor.

(6) Nothing contained in this regulation shall be deemed to affect the provisions of regulation 13.

8. Functions of agents:

(1) Every agent shall solicit and procure new life insurance business which shall not be less than the minimum prescribed in these regulations and shall endeavour to conserve the business already secured.

(2) In procuring new life insurance business, an agent shall:

- (a) take into consideration the needs of the proposers for life insurance and their capacity to pay premiums;
- (b) make all reasonable inquiries in regard to the lives to be insured before recommending proposals for acceptance and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten;
- (c) take all reasonable inquiries in regard to the lives to be insured before recommending proposals for acceptance and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten;
- (d) not interfere with any proposal introduced by any other agent.

(3) Every agent shall, with a view to conserving the business already secured, maintain contact with all persons who have become policy-holders of the Corporation through him and shall:

- a) advise every policy-holder to effect nomination or assignment in respect of his policy and offer necessary assistance in this behalf;
- b) endeavour to ensure that every instalment of premium is remitted by the policy-holder to the Corporation within the period of grace;
- c) endeavour to prevent the lapsing of a policy or its conversion into a paid-up policy; and
- d) render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid down in relation to settlement of claims.

(4) Nothing contained in these regulations shall be deemed to confer any authority on an agent to collect any moneys or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever:

Provided that an agent may be authorised by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified.

9. Minimum amount of business to be secured by agents:

(1) An agent, other than an absorbed agent, shall bring in the following business in his first agency year:

- a) if he is working in a City. Urban agglomeration or Town with an ascertained population of five lakhs or above – proposals resulting in policies for not less than Rs. 75,000 sum assured on at least twelve different lives; or
- b) if he is working in a City. Urban agglomeration or Town with an ascertained population of one lakh or above, but less than five lakhs – proposals resulting in policies for not less than Rs. 60,000 sum assured on at least twelve different lives; or
- c) If he is working in any other place with an ascertained population of less than one lakh – proposals resulting in policies for not less than Rs. 40,000 sum assured on at least twelve different lives.

(2) In the second or subsequent agency year, the agent shall bring in the following business for each year:

- a) if he is working in a City. Urban agglomeration or Town with an ascertained population of five lakhs or above proposals resulting in policies for not less than Rs. 1,00,000 sum assured on at least twelve different lives; or
- b) if he is working in a City, Urban agglomeration or Town with an ascertained population of one lakh or above, but less than five lakhs – proposals resulting in policies for not less than Rs. 75,000 sum assured on at least twelve different lives; or
- c) if he is working in any other place with an ascertained population of less than one lakh – proposals resulting in policies for not less than Rs. 60,000 sum assured on at least twelve different lives.

(3) An absorbed agent shall bring in the following business:

- (a) in the first agency year – proposals resulting in a completed business of not less than what was required of him in accordance with the provisions of the letter of appointment by which he was governed immediately before the published day;
- (b) in the second agency year – not less than the modified previous guarantee;
- (c) in the third or fourth agency year – proposals resulting in a completed business of not less than the modified previous guarantee, or a completed business amounting to one half of the sum assured which would be required if sub-regulation (2) were applicable to him but on at least six different lives, whichever is higher; and
- (d) in the fifth or subsequent agency year – business in accordance with the provisions contained in sub-regulation (2)

(4) Notwithstanding anything contained in sub-regulation (2) or sub-regulation (3), an agent shall be exempt from bringing in the business required of him under the said sub-regulation if he has continually worked for the Corporation as an agent for a period of:

- (a) not less than 21 years; or
- (b) at least fifteen years and he is at least 55 years of age; or

- (c) fifteen years and at any time subsequent thereto there is business in force in the books of the Corporation under his agency yielding a renewal premium income of not less than Rs. 40,000 per annum.

10. Payment of commission to agents:

(1) As compensation and remuneration for the discharge of all his functions under these regulations, an agent shall be paid commission at the rates set out in Schedule II on the first year premiums and renewal premiums received during the continuance of his agency in respect of the completed business under his agency.

(2) An agent shall, in addition to the commission payable under sub-regulation (1), be entitled to bonus commission on first year premiums as provided in Schedule III.

(3) (a) Notwithstanding anything contained in sub-regulation (1) and sub-regulation (2), an agent who has been confirmed may, at any time during the continuance of his agency, opt to receive commission as provided in Schedule IV.

(b) Where an option under clause (a) is exercised, the commission and bonus commission payable to the agent shall be at the rates set out in Schedule IV and Schedule V respectively in respect of the business which may be completed in his agency from the commencement of the agency year following the date on which he exercises the option, but in respect of the business completed in his agency up to the end of the agency year in which he exercises the option, the commission or bonus commission payable to him shall be as provided in Schedule II and Schedule III respectively.

(c) The option once exercised under clause (a) shall be final and irrevocable.

(4) Save as hereinafter provided, no agent shall be paid any commission or remuneration in respect of any policy not effected through him:

Provided that where a policy of life insurance has lapsed and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured thereby and where notice has been given in writing to the agent through whom the policy was effected (if such agent continues to be an agent of the Corporation), to effect the revival of the policy within a specified period of not less than one month from the date of receipt by him of the notice and the policy is not so revived, the corporation may pay to another agent who effect the revival of the policy an amount calculated at a rate not exceeding half the rate of commission at which the agent through whom the policy was effected would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premiums (excluding an interest on such arrear premiums) and also on the subsequent renewal premiums payable on the policy.

(5) Notwithstanding anything contained in sub-regulation (i), sub-regulation (2) and sub-regulation (3), and agent who is on probation shall be entitled only to the commission payable on the first year premiums received in respect of the business completed during the continuance of his agency and not to the bonus commission or commission on renewal premiums in respect of such business:

Provided that the agent shall, on his confirmation, be entitled to the bonus commission or commission on renewal premium in respect of such business.

(6) Save as provided by regulation 19, no commission shall be payable to an agent after he has ceased to be such agent.

11. Gratuity and term insurance benefits:

The gratuity and term insurance benefits admissible in the case of an agent shall be as set out in Schedule VI:

Provided that where the appointment of any person who was acting on behalf of the Corporation as an insurance agent as defined in the Insurance Act has been terminated on or after the 1st September, 1971, but before the published day, except for fraud, or where any person who was so acting as an insurance agent on behalf of the Corporation has died on or after the 1st September, 1971, but before the published day, he or his heirs, as the case may be, shall be paid an amount which shall be equal to the gratuity payable in his case had these regulations been in force on the date of termination of his appointment or his death:

Provided further that where any person who was so acting as an insurance agent on behalf of the Corporation has died on or after the 1st September, 1971, but before the published day, while his agency was subsisting, his heirs shall also be paid an amount which shall be equal to the amount of term insurance payable in his case had these regulations been in force on the date of his death.

12. Corporation's lien on agent's dues:

The Corporation shall have a first lien and charge on all moneys payable to an agent or his heirs for recovery of all debts due from him to the Corporation and may apply any such moneys directly towards realization of such debts.

13. Termination of agency:

(1) if an agent fails to bring in the business required of him under regulation 9 in an agency year, his appointment shall stand terminated at the end of such agency year:

Provided that nothing contained herein shall apply to an agent who has been exempted under sub-regulation (4) of regulation 9 from bringing in the minimum business required under the said regulation.

(2) An agency which stands terminated under sub-regulation (1) may be reinstated by the competent authority if it is satisfied that the failure of the agent to bring in the business required of him was due to reasons beyond his control.

(3) Where an agency is reinstated under sub-regulation (2), it shall be treated as continuous for all purposes.

14. Termination of agency on-cancellation of, or failure to renew, licence:

If the license of an agent is cancelled or is not renewed in accordance with the provisions of Section 42 of the Insurance Act, his appointment as agent shall stand terminated from the date, the licence is cancelled or, as the case may be, from the date the licence ceases to be valid:

Provided that if the licence of the agent is restored or renewed, the competent authority shall, without prejudice to the provisions of regulation 16, reinstate the agency.

15. Termination of agency on account of certain disqualifications:

If an agent:

- (a) is found to be of unsound mind by a court of competent jurisdictions;
- (b) is found to be guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of an attempt to commit any such offence by a court of competent jurisdiction;
- (c) in any judicial proceeding, has been found to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against the Corporation or any of its subsidiaries or against any person having official dealings with the Corporation or any of its subsidiaries,

His appointment shall be liable to be terminated without notice and the competent authority shall forthwith terminate his appointment.

16. Termination of agency for certain lapses:

- (1) The Competent authority may by order, determine the appointment of an agent,
 - (a) if he has failed to discharge his functions, as set out in regulation 8, to the satisfaction of the competent authority;
 - (b) if he acts in a manner prejudicial to the interest of the Corporation or to the interests of its policyholders;
 - (c) If evidence comes to its knowledge to show that he has been allowing or offering to allow rebate of the whole or any part of the commission payable to him;
 - (d) if it is found that any averment contained in his agency application or in any report furnished by him as an agent in respect of any proposal is not true;
 - (e) if he becomes physically or mentally incapacitated for carrying out his functions as an agent;
 - (f) if he being an absorbed agent on being called upon to do so, fails to undergo the specified training or to pass the specified tests, within three years from the date on which he is so called upon:

Provided that the agent shall be given reasonable opportunity to show cause against such termination.

- (2) Every order of termination made under sub-regulation (1) shall be in writing and communicated to the agent concerned.

- (3) Where the competent authority proposes to take action under Sub-regulation (1) it may direct the agent not to solicit or procure new life insurance business until he is permitted by the competent authority to do so.

17. Termination of agency by notice:

- (1) The appointment of an agent may be terminated by the competent authority at any time by giving him one month's notice thereof in writing.
- (2) An agent may, by giving one month's notice in writing to the competent authority, discontinue his agency and after the expiry of the period of one month his agency shall stand terminated.

18. Procedure in insolvency cases:

- (1) If an agent applied to a court of competent jurisdiction for being adjudged insolvent or is adjudged insolvent by such court, the competent authority may direct him to forthwith discontinue soliciting or procuring new life insurance business and the agent shall not thereupon solicit or procure new life insurance business until the court grants an absolute order of discharge and the competent authority revokes its earlier direction.
- (2) Where an agent ceases to solicit or procure new life insurance business in accordance with sub-regulation (1), the requirements of regulation 9 shall not apply.
- (3) If an agent fails to obtain an absolute order of discharge up to the end of two agency years following the agency year in which the order adjudging him insolvent was passed, his appointment shall be liable to be terminated by the competent authority by giving him three months' notice in writing.

19. Payment of commission on discontinuance of agency:

- (1) In the event of termination of the appointment of an agent, except for fraud, the commission on the premiums received in respect of the business secured by him shall be paid to him if such agent:
 - (a) has continually worked for at least 5 years since his appointment and policies assuring a total sum of not less than 2 lakhs effected through him were in full force on a dated one year before his ceasing to act as such agent; or
 - (b) has continually worked as an agent for at least 10 years since his appointment; or
 - (c) being an agent whose appointment has been terminated under clause € of sub-regulation (1) of regulation 16 has continually worked as an agent for at least two years from the date of his appointment and policies assuring a total sum of not less than Rs. 1 lakh effected through him were in full force on the dated immediately prior to such termination:

Provided that in respect of an absorbed agent the provisions of clause (a) shall apply as if for the letters, figures and word "Rs. 2 lakhs", the letters and figures "Rs. 50,000" had been substituted.

- (2) Any commission payable to an agent under sub-regulation (1) shall; notwithstanding his death, be payable to his nominee or nominees or, if no nomination is made or is subsisting to his heirs, so long as such commission would have been payable had the agent been alive.
- (3) In the event of the death of the agent while his agency subsists, any commission payable to him had he been alive shall be paid to his nominee, or if no nomination is made or is subsisting, to his heirs, so long such commission would have been payable had the agent been alive, provided he had continually worked as an agent for not less than 2 years from the date of his appointment and policies assuring a total sum of not less than 1 lakh effected through him were in full force on the date immediately prior to his death.
- (4) If the renewal commission payable under sub-regulation (1) or sub-regulation (2) or sub-regulation (3) falls below Rs. 100/- in any financial year (hereinafter referred to as the said financial year) the competent authority may, notwithstanding anything contained in the said sub-regulation, commute all commission payable in subsequent financial years for a lump sum which shall be three times the amount of renewal commission paid in the said financial year, and on the payment of such lump sum to the agent or his nominees or heirs, as the case may be, no commission on the business effected through the agent shall be payable in the financial years subsequent to the said financial year.

20. Appeals:

- (1) Every agent shall have a right of appeal to the relevant appellate authority set out in Schedule VII against an order terminating the appointment which has been passed under regulation 15 or regulation 16 or sub-regulation (1) of regulation 17 or regulation 18.
- (2) Every person submitting an appeal shall do so separately and in his own name
- (3) The appeal shall be addressed to the authority to whom the appeal lies, shall not contain any disrespectful or improper language and shall be complete in itself.
- (4) The appeal shall be submitted through the authority which made the order appealed against.
- (5) No appeal under this regulation shall be entertained unless it is submitted within a period of three months from the date on which the applicant receives a copy of the order appealed against:

21. Withholding of appeals:

An appeal may be withheld by the authority through whom it is sent:

- (i) If it does not comply with the provisional of sub-regulation (2) or sub-regulation (3) of regulation 20; or
- (ii) if it is not submitted within the period specified in sub-regulation (5) of regulation 20 and it does not set out any cause for delay; or
- (iii) if it is a repetition of an appeal already decided:

Provided that where an appeal is withheld the appellant shall be informed of the fact and the reasons therefore and except in a case covered by clause (iii) the appeal shall be returned to the appellant and if it is resubmitted within one month thereof with suitable amendments or showing cause for delay as the case may be it shall not be withheld.

22. Transmission of appeal:

- (1) The authority which made the order appealed against shall, within a period of three months from the date of receipt of the appeal, transmit to the appellate authority ever appeal which is not withheld under regulation 21 together with its comments thereon and the relevant records.
- (2) The appellate authority may direct transmission to it of any appeal withheld under regulation 21 and thereupon such appeal shall be so transmitted with the comments of the authority withholding the appeal and the relevant records.

23. Consideration of appeals:

- (1) Where an appeal is received under these regulations, the appellate authority shall consider all the circumstances of the case and pass such orders as it deems fit:

Provided that the appellant shall be given a reasonable opportunity of representing his case.

- (2) All appeals shall be disposed of as expeditiously as possible as but not later than six months from the date of the receipt of the appeal by the appellate authority.

24. Memorial:

An agent whose appeal under these regulations, not being an appeal against an order under sub-regulation (1) of regulation 17, has been rejected by the appellant authority may address a memorial to the Chairman of the Corporation in respect of that matter within a period of three months from the date receipt by the agent of a copy of the order of the appellate authority and the Chairman shall, after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify.

25. Power to issue instructions or directions:

The Managing Director may, from time to time, issue such instructions or directions as may be necessary to give effect to the provisions of these regulations.

26. Power to frame schemes:

The Managing Director may, with the previous approval of the Corporations frames schemes not inconsistent with these regulations to provide for:

- (a) selection and training of persons for appointment as agents;
- (b) payments of stipends:
- (c) grant of loans to agents.

27. Relaxation:

The Executive Committee referred in sub-section (1) of section 19 of the Life Insurance Corporation Act, 1956 (31 of 1956) may in the interest of the Corporation, for reasons to be recorded in its resolution, relax any of the provisions of these regulations in individual cases.

SCHEDULES

SCHEDULE I

(See regulation 3 (1) (e))

Regulation No.	Nature of functions	Competent authority
(1)	(2)	(3)
4	Appointment of agents	Officer in charge of the Branch.
4(5)	Change of agency year	Zonal Manager
5(1) proviso	Relaxation of educational qualifications of agents.	Divisional Manager
7(2)	Confirmation of an agent in his appointment	Officer in charge of the Branch
7(3)	Reducing or dispensing with the initial period of probation of an agent.	Divisional manager
7 (5)	Terminating the appointment of an agent on probation.	Officer in charge of the Branch.
13 (2)	Reinstatement of agency when failure to bring the business required of the agent was due to reasons beyond control	Divisional Manager
14 proviso	Reinstatement of agency when licence is restored or renewed.	Officer in charge of the Branch
15	Termination of agency on account of certain disqualification.	Officer in charge of the Branch
16	Termination of agency for certain lapses and issue of direction not to solicit or procure new life insurance business.	Divisional Manager
17(1)	Termination of agency by notice	Managing Director
17 (2)	Acceptance of notice by an agent to discontinue agency.	Officer in charge of the Branch.
18	Direction not to solicit or procure new life insurance business/termination of agency in insolvency cases	Divisional Manager.
19(4)	Commutation of renewal commission.	Divisional Manager.

SCHEDULE II

Rates of Commission payable to agents during the continuance of the agency.

(see regulation 10(1) and (3))

Where the policy secured by the agent is under Assurance Tables No.s:	Where the premium paying period under the policy secured by the agent is:											
	15 years or more			10 to 14 years			5 to 9 years			2 to 4 years		
	Commn. On 1 st year's premium	Commn. On 2 nd & 3 rd years' premium	Commn. On Subsequent years' premiums	Commn. On 1 st year's premium	Commn. On 2 nd & 3 rd years' premium	Commn. On Subsequent years' premiums	Commn. On 1 st year's premium	Commn. On 2 nd & 3 rd years' premium	Commn. On Subsequent years' premiums	Commn. On 1 st year's premium	Commn. On 2 nd & 3 rd years' premium	Commn. On Subsequent years' premiums
	%	%	%	%	%	%	%	%	%	%	%	%
1, 2, 3, 5, 11, 14, 16 to 20, 22 to 28, 33, 34, 46 to 48	25	7.5	5	20	7.5	5	10	5	5	5	2.25	2.25
21 & 45	7.5	2	2	7.5	2	2	7.5	2	2	5	2	2
41 & 50	10	5	5	10	5	5	7.5	5	5	5	2	2
58	--	--	--	--	--	--	7.5	3	3	--	--	--
Where the agent has secured a policy where under a single premium is payable.	FOR ALL PLANS: COMMISSION 2%											
Note: 1.	Policies under Assurance Tables 1 & 2 effected at the proposer's age 56 or above will be treated as policies whereunder premium cases at age 70 for the purpose of fixing the premium paying period.											
2.	"Premium" means premium received and adjusted in respect of a policy.											
3.	1 st year's premium means the premium payable on a policy for the first year, 2nd year's premium means the premium payable on a policy for the second year and so on.											
4.	The commission payable on 1 st year's premium will be referred to as first year commission and the commission payable on 2 nd and subsequent years' premiums will be referred to as renewal commission.											

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SCHEDULE III

Bonus Commission payable to agents

(See regulation 10 (2) and (3))

1. In this Schedule "eligible first year commission" means the first year commission earned by an agent in any agency year excluding the commission earned under Single Premium policies, Deferred Annuity policies and Pure Endowment policies secured by him.

2. In respect of the first and second agency years, an absorbed agent falling under an entry in columns (1) of the Table below shall be entitled to bonus commission at the rate set out in the corresponding entry in column (2) thereof.

TABLE

Classification (1)	Rate of bonus commission (2)
(a) If the agent has earned an eligible first year commission of Rs. 400 or more but less than Rs. 700	20% of the eligible first year commission.
(b) If the agent has earned an eligible first year commission of Rs. 700 or more but less than Rs. 1000.	30% of the eligible first year commission.
(c) If the agent has earned an eligible first year commission of Rs. 1,000 or more.	40% of the eligible first year commission.

3. An agent shall be entitled to bonus commission at the rate of 40% of the eligible first year commission:

(i) If he being an agent falling under an entry in item A or item B of column (1) of the table below has secured, either:

- (a) Proposals resulting in a completed business which is on not less than the number of lives mentioned against the corresponding entry in column (2) and a first year premium income of at least the amount mentioned in the corresponding entry in column (3) thereof; or
- (b) Proposals resulting in a completed business which is on not less than one-half of the number of lives mentioned against the corresponding entry in column (2) and a first year premium income of at least one and a half times the amount mentioned in the corresponding entry in column (3); or

(ii) if he being an agent falling under an entry in item C of column (1) of the Table below has secured proposals resulting in a completed business which is on not less than the number of lives mentioned against the corresponding entry in column (2) and a first year premium income of at least the amount mentioned in the corresponding entry in column (3) thereof.

TABLE

Classification (1)	No. of Lives (2)	First year Premium Income (3)
A In respect of the first agency year of an agent other than an absorbed agent		Rs.
(a) If he is working in a City, Urban agglomeration or Town with an ascertained population of five lakhs or above.	12	3,000
(b) If he is working in a City, urban agglomeration or Town with an ascertained population of one lakh or above but less than five lakhs	12	2,400
(c) If he is working in any other place with an ascertained population of less than one lakh	12	1,600
B In respect of the second and subsequent agency years of an agent other than an absorbed agent and the fifth and subsequent years of an absorbed agent:		
(a) If he is working in a City, Urban agglomeration or Town with an ascertained population of five lakhs or above.	12	4,000
(b) If he is working in a City, urban agglomeration or Town with an ascertained population of one lakh or above but less than five lakhs	12	3,000
(c) If he is working in any other place with an ascertained population of less than one lakh	12	2,400
C In respect of the third and fourth agency years of an absorbed agent:		
(a) If he is working in a City, Urban agglomeration or Town with an ascertained population of five lakhs or above.	12	2,000
(b) If he is working in a City, urban agglomeration or Town with an ascertained population of one lakh or above but less than five lakhs	12	1,500
(c) If he is working in any other place with an ascertained population of less than one lakh	12	1,200

4. Where an agent has earned bonus commission for five successive years in accordance with the foregoing provisions of this schedule, he shall be entitled to bonus commission for the agency year immediately following such five years even if he has not fulfilled in respect of that year the conditions set out in the said provisions.

5. Notwithstanding anything contained in clause 2, clause 3 and clause 4, an agent who has been exempted under sub-regulation (4) of regulation 9, shall be entitled to bonus commission, if he has to his credit at the time of such exemption 15 qualifying years as defined in Schedule VI.

SCHEDULE IV

Alternative rates of commission payable to an agent at his option during the continuance of the agency

(See regulation 10 (3))

Where the policy secured by the agent is under Assurance Tables Nos.:	Where the premium paying period under the policy secured by the agent is:												
	15 years or more				10 to 14 years			5 to 9 years			2 to 4 years		
	Commn. On 1 st years' premium	Commn. On 2 nd & 3 rd years' premium	Commn. On 4 th & 5 th years' premium	Commn. On Subsequent years' premiums	Commn. On 1 st year's premium	Commn. On 2 nd & 3 rd years' premium	Commn. On Subsequent years' premiums	Commn. On 1 st year's premium	Commn. On 2 nd & 3 rd years' premium	Commn. On Subsequent years' premiums	Commn. On 1 st year's premium	Commn. On 2 nd & 3 rd years' premium	Commn. On Subsequent years' premiums
	%	%	%	%	%	%	%	%	%	%	%	%	%
1, 2, 3, 5, 11, 14, 16 to 20, 22 to 28, 33, 34, 46 to 48	10	10	10	5	20	7.5	5	10	5	5	5	2.25	2.25
21 & 45	7.5	2	2	2	7.5	2	2	7.5	2	2	5	2	2
41 & 50	10	5	5	5	10	5	5	7.5	5	5	5	2	2
58	---	---	---	---	---	---	---	7.5	3	3	---	---	---
Where the agent has secured a policy where under a single premium is payable.	FOR ALL PLANS: COMMISSION 2%												
Note:	1.	Policies under Assurance Tables 1 & 2 effected at the proposer's age 56 or above will be treated as policies whereunder premium cases at age 70 for the purpose of fixing the premium paying period.											
	2.	"Premium" means premium received and adjusted in respect of a policy.											
	3.	1 st year's premium means the premium payable on a policy for the first year, 2nd year's premium means the premium payable on a policy for the second year and so on.											
	4.	The commission payable on 1 st year's premium will be referred to as first year commission and the commission payable on 2 nd and subsequent years' premiums will be referred to as renewal commission.											

SCHEDULE V

Bonus Commission payable to agents

(Agents regulation 10 (3))

1. In this Schedule "eligible first year commission" means the first year commission earned by an agent in any agency year excluding the commission earned under Single Premium policies, Deferred Annuity policies and Pure Endowment policies secured by him.

2. An agent shall be entitled to bonus commission at the rate of 40% of eligible first year commission if he being an agent falling under an entry in column (1) of the Table below has secured either:

<i>Classification</i>	<i>Number of lives</i>	<i>First year premium income</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
(d) If he is working in a City, Urban agglomeration or Town with an ascertained population of five lakhs or above.	12	4,000
(e) If he is working in a City, urban agglomeration or Town with an ascertained population of one lakh or above but less than five lakhs	12	3,000
(f) If he is working in any other place with an ascertained population of less than one lakh	12	2,400

3. An agent to whom this Schedule is applicable shall be entitled, in addition to the bonus commission admissible to him under clause 2, to further bonus commission at the rate of 60% of the eligible first year commission earned by him on policies effected under Assurance Tables No. 1, 2, 3, 5, 11, 14, 16 to 20, 22 to 28, 33, 34 and 46 to 48, provided the premium paying period under such policies is not less than 15 years.

4. Where an agent has earned bonus commission for five successive years in accordance with the foregoing provisions of this Schedule, he shall be entitled to bonus commission for the agency year immediately following such five years even if he has not fulfilled in respect of that year the conditions set out in the said provisions.

5. Notwithstanding anything contained in clause 2, clause 3 and clause 4, an agent who has been exempted under sub-regulation (4) of regulation 9 shall be entitled to bonus commission, if he has to his credit at the time of such exemption 15 qualifying years as defined in Schedule VI.

SCHEDULE VI

Gratuity and Term Insurance (See regulation 11 and Clause 5 of Schedule III and V)

1. In this Schedule, unless the context otherwise requires,

(a) "eligible rate" means:

- (i) in the case of an agent who has worked on the relevant date for fifteen agency years or more as an agent. 180th part of the aggregate of the qualifying yearly renewal commission earned by him in the qualifying years out of the fifteen agency years immediately preceding the relevant date: and
- (ii) in the case of an agent who has worked on the relevant date for less than fifteen agency years as an agent, one-twelfth of the qualifying yearly renewal commission earned by him in the qualifying years by the total number of agency years he had worked as an agent on the relevant date;

Explanation: For the purposes of this Schedule, agency year in the case of an absorbed agent includes every period of twelve months prior to the first agency year, but in the case of any agent does not include an agency year during which the agent has worked for less than twelve complete months.

(b) "qualifying year" means:

- (i) the agency year in which an agent, acting on behalf of the Corporation between the 1st September, 1956, and the published day, had completed a business of not less than the previous guarantee, or
- (ii) the agency year in which an agent, functioning or continuing to function after the published day, had completed the business required of him under regulation 9, but in respect of an absorbed agent the first agency year shall not be a qualifying year unless he had completed a business of not less than the modified previous guarantee.

(c) "qualifying yearly renewal commission" means:

- (i) in respect of agency years ending on or after the 1st April, 1968, the renewal commission earned by an agent in a qualifying year included in such agency years, and
- (ii) in respect of agency years ending on or before the 31st March, 1968 one third of the aggregate of the renewal commission earned in the three agency years immediately preceding the 1st April, 1971.

(d) "relevant date" means the date on which the eligibility for payment of gratuity is determined under clause 2.

2. (1) An agent shall be eligible for gratuity:

- (i) If he has worked continually and for fifteen or more qualifying years, and

- (a) he is not below sixty years of age; or
 - (b) his agency ceases or stands terminated under any of the provisions of these regulations for any reason other than an excepted reason;
- or

(ii) if he has been confirmed in his appointment, and :

- (a) he dies while his agency is subsisting.
- or
- (b) his appointment as agent is terminated under clause (e) of sub-regulation (1) of regulation 16.

Note: In this sub-clause, "exempted reason" means any of the reasons mentioned in:

- (i) Clause (b) or clause (c) of regulation 15;
- (ii) Clause (a) or clause (b) or clause (c) of sub-regulation (1) of regulation 16, or
- (iii) Clause (d) of sub-regulation (1) of regulation 16, if it is established that the agent had acted with a view to defrauding the Corporation.

(2) An agent may, before he has attained the age of 59 years, by notice in writing to the Divisional Manager, request that his eligibility for gratuity may be determined on completion of 65 years of age; and in that case sub-clause (1)(i) shall have effect as if in item (a) thereof, for the word "Sixty" the word "Sixty-five" had been substituted and the relevant date shall be computed accordingly.

(3) Gratuity admissible to an agent shall be at the eligible rate for each qualifying year for the first fifteen qualifying years and at half the eligible rate for the subsequent ten qualifying years, provided the maximum amount of gratuity payable shall not exceed Rs. 30,000.

(4) Subject to any lien the Corporation may have on the amount of gratuity admissible to an agent, it shall pay the agent or his nominee or nominees or, if no nomination is made or is subsisting, his heirs, the amount of gratuity admissible under this clause.

(5) Notwithstanding anything contained in the foregoing sub-clause, no gratuity shall be admissible to an agent who is also an employee of the Corporation for the period he remains such employee and his agency work in such period shall not count for any purpose under this clause even after the cessation of his service as an employee.

(6) Where an agent has received any gratuity under this clause, no further gratuity shall be admissible to him for any period during which he works thereafter as an agent.

3. (1) In the event of the death of an agent while his agency subsists, the Corporation shall make payment of an amount in accordance with the provisions hereinafter contained if the following conditions are satisfied in respect of such agent.

- (a) he had not completed 50 years of age on the date of his appointment as an agent:

Explanation: For determining the date of appointment of an absorbed agent, the actual date of his appointment before the published day as an insurance agent shall be taken into account.

- (b) his death takes place before he has completed 60 years of age;

- (c) he had an insurance policy (other than a temporary insurance policy) on his own life assuring a sum of not less than Rs. 5,000 which was in force at the time of his death:

Provided that in the case of an absorbed agent, this condition shall be deemed to have been satisfied if he has held a policy which matured for payment at any time after he has completed 55 years of age; and

- (d) he, not being an absorbed agent, has been confirmed as an agent and has to his credit three or more qualifying years at the date of his death; or he, being an absorbed agent, has to his credit three qualifying years and has either
- (i) completed five agency years at the date of his death; or
 - (ii) undergone such training and passed such tests, as may be specified for the purpose of regulation 6.

(2) The amount payable under sub-clause (1) (hereinafter referred to as the amount of term insurance) shall be based on the average annual renewal commission earned by the agent in the three agency years immediately preceding his death (hereinafter referred to as the average commission) and shall be according to the following scale:

<i>Average Commission</i>	<i>Amount of term insurance</i>
(a) If the average commission was less than Rs. 1,001	Rs. 3,000
(b) If the average commission was Rs. 1,001 or more, but less than Rs. 15,000	Rs. 3,000 plus one half of the excess of average commission over Rs. 1,000.
(c) If the average commission was Rs. 15,000 or more	Rs. 10,000.

- (3) Subject to any lien the Corporation may have on the amount of term insurance admissible in the case of an agent, it shall pay his nominee or nominees, or if no nomination is made or is subsisting, his heirs, the amount of term insurance admissible under this clause.
- (4) Notwithstanding anything contained in the foregoing sub-clauses, the amount of term insurance shall not be admissible in respect of an agent who was also an employee of the Corporation if his death had taken place during the period he remained such employee and his work as agent during such period shall not count for any purpose even after the cessation of his service as an employee.

SCHEDULE VII
Appellate Authority
(See regulation 20(1))

Authority Passing order of termination	Appellate Authority
(1)	(2)
(a) Officer in charge of the Branch	Divisional Manager
(b) Divisional Manager	Zonal Manager
(c) Managing Director	Corporation

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